

Review of Solent European Marine Sites (SEMS) Management Scheme

Tender Specification

1.0 Introduction and Background

The Solent European Marine Sites (SEMS) Management Scheme was produced in 2004 to ensure that the European marine site is managed in line with the Habitats and Birds Directive and to prevent damage or deterioration to the habitats and species for which it is designated. The Management Scheme was produced by the Management Group of Relevant Authorities in consultation with the Strategic Advisory Group. Further information about the SEMS and a copy of the Management Scheme can be viewed on <http://www.solentems.org.uk/>

The Management Scheme stated that it would be reviewed after 5 years from its submission to Defra (as recommended by Defra).

The Management Group have agreed to undertake a review and a consultant is now sought to undertake the main tasks as set out in this brief.

2.0 Tender Objectives and Scope

The SEMS Management Scheme (2004) will be reviewed to take into account improved knowledge and information and comments of the relevant authorities.

The objectives of the review are:

- To ensure that the conservation objectives of the SEMS continue to be met
- To ensure that changes in site usage are updated
- To ensure that improvements in knowledge and information are taken into account (including condition of the habitats and species for which the site is designated)
- Where possible, ensure that the management scheme includes actions for implementation and assign responsibilities.
- To provide an improved method for annual monitoring and reporting.

3.0 Skills Required

- ICZM knowledge (knowledge of relevant legislation including designations, coastal & marine conservation, the Solent coast and Solent organisations)
- Project work/development (proven experience of project delivery)
- Effective communication skills (clear & confident presentations delivery, liaison with organisations, effective team working, clear and concise report writing)
- Organisation skills (multi tasking, meetings experience, deadlines/time management, basic skills - literacy, numeracy)

4.0 Deliverables

The expected deliverables will include the following:

i) An update to the Management Scheme to take into account any new information that could affect the future management and condition of the SEMS

This will include a consideration of the following:

- changes in activities and site usage through face to face interviews with all Relevant Authorities (determine if there are any new activities and whether there are any changes in the responsibilities of activities, if so update the activity inventories for these and determine new management considerations as necessary)
- interpret the first 5 years monitoring reports and Natural England's condition monitoring data to establish a baseline of information (to compare any future monitoring and to determine cause/effect, where cause/effect is identified determine clear & realistic management options)
- Incorporation of new information and knowledge e.g.
 - Published scientific information
 - outcomes of other strategies/initiatives (SMPs/ Habitats Regulation Assessments, PUSH Green Infrastructure strategy, Balanced Seas and coastal habitat projects)
 - legislative changes (e.g. on 1 April 2010 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994. Management schemes need to ensure relevant updates and changes to numbering are included e.g. regulations have been renumbered.)
- potential broad-scale effects of climate change and implications for the management of the sites
- review the management considerations to see if they are still appropriate
- formulate a list of actions including those RAs responsible if appropriate
- determine whether the management scheme meets legislative requirements to protect the European marine site and if not why and what needs to be done.

The above information will be assessed and where appropriate built into the revised management scheme. It is proposed that a stand alone update be produced including the new information and an overall summary of management actions.

ii) A report on whether an action plan is required, and if so how this could be produced

This will include a consideration of the following:

- From Natural England's condition assessment (date unsure but possibly December 2010) identify key areas where damage or deterioration to the site is occurring

- Using the appendices in the Management Scheme as a guide consider which activities could potentially be causing the damage or deterioration to the site and where is this damage taking place.
- If appropriate propose further work and/or topic/cluster groups to examine these activities with aim of producing detailed actions to manage activities.
- Identify the resource implications for different options

iii) A revised annual monitoring process

This will include the following:

- Devise a revised annual monitoring process (e.g. simplify reporting methodology for greater RA participation, consider on-line approach)
- Devise a revised format for the annual monitoring report
- Identify the resource implications

5.0 Methodology

A two stage review process/methodology is proposed:-

- Information gathering (including face to face visits with each RA) leading to a discussion of key findings and initial ideas with the Management Group;
- Preparation of proposals, consultation with the Strategic Advisory Group and then finalisation by the Management Group

A detailed timetable of proposed tasks is outlined in appendix one.

6.0 Project Management

The project will be managed by Hampshire County Council. A sub-group (of the SEMS Management Group) will steer and provide guidance on the work. This is proposed to comprise Hampshire County Council, Sussex Sea Fisheries Committee, Natural England, a representative of the Harbour Authorities and a representative of the Local Authorities

The project manager will be Rachael Gallagher

In addition to contact by phone/email the following meetings are anticipated

- Initial half day meeting with sub-group.
- Up to 3 half day meetings with contract manager and others as necessary and regular updates on progress to the sub-group
- Presentation of findings to the full Management Group

There may be a requirement to present the findings to other colleagues/committees or panels as necessary.

It is anticipated that the project will commence October 2010 and be complete with all objectives achieved by April 2011.

Standard terms and conditions are outlined in appendix two.

7.0 Submissions

The consultants will be required to outline and justify their favoured approach in their submission.

Tenders should be submitted via email by 27 August 2010 to Rachael Gallagher at the Hampshire County Council offices.

In tendering for this contract prospective consultants will need to submit the following:-

- Set out their detailed approach to undertaking the review that will meet the stated objectives i.e. project methodology,
- project team details
- staff time and costs (including hourly breakdown),
- an indication of time to be spent on each task
- knowledge, background and experience of similar work.
- an indication of delivery against proposed timescales included in this specification.

The contract will be awarded on the basis of best value for money. Please note that the lowest tender is not necessarily a guarantee of good value for money. Hampshire County Council will contact each consultant after the selection process is complete. It is not intended to conduct any interviews, selection will be based on information provided in the tenders.

Any queries contact Rachael Gallagher on 01962 846925 or by email Rachael.gallagher@hants.gov.uk

Appendix 1 – Timetable

In order to produce the main outputs the following timetable is proposed.

Tasks	Timescale (Indicative)					
	Oct '10	Nov '10	Dec '10	Jan '11	Feb '11	Mar '11
Stage 1 - Information Gathering						
Familiarisation with the Management Scheme						
Discussion with each of the 31 RAs. Meetings and phone calls to gather views and relevant information necessary to update the management scheme. Notify SAG of the review.						
Information gathering (other projects/initiatives as appropriate)						
Production of initial proposals (based on analysis of the information gathering outline the key aspects to be included in final reports/proposals)						
Management Group Meeting – presentation of initial findings to MG and feedback						
Consult SAG members (email/post). Meet individual only if requested.						
Stage 2 - Produce Final Reports/Proposals (Outcomes listed under section 3)						
Produce final draft reports/proposals (i.e. update to the Management Scheme, proposals for action plan and process for monitoring) based on the recommendations from the MG						
Consult Management Group and wider consultation with the Strategic Advisory Group and produce final report. Circulate the final proposals and meet key stakeholders as necessary						
Produce final reports/proposals						

Appendix 2

HAMPSHIRE COUNTY COUNCIL **ENVIRONMENT DEPARTMENT**

STANDARD CONDITIONS OF CONTRACT FOR CONSULTANTS

1) Interpretation

In these conditions, unless the context otherwise requires, the following terms shall have the meanings given below

- (1) "Specification" means the documents setting out the requirements of the Employer and appended to the invitation to tender.
- (2) "Consultants" means the person or persons firm or company whose tender has been accepted by the Employer and includes the Consultant's personal representatives successors and permitted assigns.
- (3) "Contract" means these conditions together with the Specification and the invitation to tender, the tender response and the written acceptance thereof.
- (4) "Employer" means Hampshire County Council of the Castle, Winchester and includes the Employer's personal representatives or successors.
- (5) "Project Manager" means the Director of Environment for the time being of the Employer or her duly authorised representative.
- (6) "Service" means the work that is described in the Specification in respect of which the Employer has engaged the Consultants.
- (7) "Deliverables" means all drawings, reports, calculations, documents and other materials produced for the purposes of the Service by the Consultants or under their direction or supervision under the Contract.
- (8) "Price" means the price to be paid to the Consultant in consideration for proper performance of the Service in accordance with the Contract.
- (9) "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation.
- (10) "EIR" means the Environmental Information Regulations 2004.

2 Commencement Date

This Contract shall commence on the date it is executed by the parties ("the Commencement Date") and shall continue in force unless terminated in accordance with the terms of this Contract.

3 Care and Diligence

- 3.1 The Consultants shall in the discharge of all the duties hereunder agreed to be performed by them exercise reasonable skill, care and diligence.

4 Compliance with the Specification and Project Manager's Instructions

- 4.1 The Consultants shall in carrying out their duties hereunder conform to and comply in all respects with the terms of the Specification and all subsequent instructions of the Project Manager, which shall be confirmed in writing, so far as such instructions are applicable to the Service or to the services hereunder agreed to be performed by them, and in the case of any conflict between the terms of the Specification and any subsequent instructions, the subsequent instructions shall prevail.
- 4.2 The Consultants shall obtain the prior approval of the Project Manager to any modification of or any variation or omission from or addition to the Service or the Specification (not being a modification, variation or omission made by the Consultants in accordance with such discretion as may be delegated in writing to them in that behalf by the Employer).

5 Project Manager Responsibilities

- 5.1 The Project Manager shall provide such plans, documents and information relevant to the Service as may be necessary to enable the Consultants to carry out their duties hereunder.

6 Consultation, Monitoring and Personnel

- 6.1 The Consultants shall consult the Project Manager and keep him informed in all matters connected with the Service in such manner and at such times as the Project Manager may require.
- 6.2 Without prejudice to the generality of Clause 6.1 the Consultants shall provide to the Project Manager reports on the progress of the Service in such form and at such frequency as the Project Manager may specify from time to time.
- 6.3 Where necessary the Consultants shall collaborate and confer with any other consultants or any employees of the Employer in connection with the Service.
- 6.4 The management expertise and technical experience of the Consultant are considered to be extremely important for the successful completion of the work to the required high standards and time deadlines. The Consultant shall make every effort to ensure the continuity of the proposed team throughout the commission. Should a change in personnel be unavoidable (i.e. for reasons outside the control of the Consultant) a suitably qualified replacement must be submitted to the Employer for approval within a week of the notification.

7 Attendance at Meetings

- 7.1 The Consultants shall attend, or be represented by a person approved by the Employer, at all meetings convened by the Employer in connection with the Service to which they may be invited and shall advise and assist the Project Manager, the Employer, and its officers on all matters relating to the Service which may be within the scope of the duties the Consultants have assumed under this Contract.

8 Commencement Time and Delays

- 8.1 The Consultants shall commence the Service as indicated in the Specification. Thereafter the Consultants shall proceed with the Service with due expedition and without delay in accordance with the Contract and shall complete the Service within the period specified in the Specification.
- 8.2 If the Consultants shall fail to perform the Service or any part thereof with due diligence and expedition, or shall refuse or fail to comply with any reasonable instruction given to them in writing by the Project Manager, in connection with such default, the Employer may give notice to the Consultants to make good such failure.
- 8.3 If the Consultants should fail to comply with the notice referred to in Clause 8.2 within seven days from receipt of such notice then without prejudice to any other right it may have under the Contract the Employer may, upon giving notice in writing to the Consultants, terminate the Contract and employ others to perform the Service. If the cost to the Employer of employing others to perform the Service shall exceed the Price which would have become payable to the Consultants then the Employer shall have the right to recover from the Consultants the excess cost.

9 Payments

- 9.1 In consideration for the Consultant's proper performance of the Service in accordance with the Contract the Council shall make payment of the Price in accordance with the payment provisions in the Specification.

10 Confidentiality

- 10.1 The Consultants and the Employer shall keep confidential any information obtained under the Contract and shall not divulge the same to any third party without the consent in writing of the other party.
- 10.2 The provisions of this Clause 10 shall not apply to:
- 10.2.1 any information in the public domain otherwise than by breach of this Clause;
 - 10.2.2 information in the possession of the receiving party thereof before divulgence as aforesaid;
 - 10.2.3 information obtained from a third party who is free to divulge the same;
 - 10.2.4 information which the receiving party thereof is required to disclose pursuant to a statutory, legal or parliamentary obligation, including any requirements for disclosure under the FOIA, or the EIR.

10.3 The Consultants and the Employer shall only divulge confidential information to those employees who are directly involved in the Contract and will ensure that such employees are aware of and comply with the obligations hereunder as to confidentiality.

11 Intellectual Property Rights

11.1 The Employer shall be entitled to the copyright and all other intellectual property rights in the Deliverables.

11.2 The Consultants shall do all such things and execute all such documents and deeds as may reasonably be required in order to ensure that the copyright and all other intellectual property rights in the Deliverables shall vest in the Employer.

11.3 The Employer hereby grants to the Consultants a non-exclusive, royalty free licence to use the Deliverables solely for the purposes of the Service.

11.4 For the avoidance of doubt if the Consultants shall incorporate in the Deliverables, any idea invention, innovation or design in respect of which they shall prior to the date of this Contract have obtained or applied for any patent under the Patent Act or registered a design under the Registered Design Act 1949, the foregoing provisions of this Clause shall not operate to prevent the free use and exploitation by the Consultants of such idea, invention, innovation or design for any purpose other than the Service.

11.5 The Consultants warrant that the Employer's use of the Deliverables or other items provided in accordance with the Contract will not infringe any third party's intellectual property rights. The Consultants shall indemnify the Employer against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer arising out of any dispute or proceedings brought by a third party alleging infringement of his intellectual property rights by virtue of the Employer's use of the Deliverables or other items provided in accordance with the Contract.

12 Ownership of Materials

12.1 On completion of the Service or termination of the Contract all documents and the like and all material and the like purchased by the Consultants at the expense of the Employer for the purpose of the Service shall be handed to the Employer and become its property.

13 Publication

13.1 The Consultants shall not publish or cause to be published or communicate to any third party, in any form any matter relating to the Service or to any work done under the Contract, except with the written consent of the Employer which shall not be unreasonably withheld.

14 Liability and Insurance

- 14.1 The Consultants shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the performance of the Contract. Further, the Consultants shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the performance of the Contract.
- 14.2 Without prejudice to their liability to indemnify the Employer the Consultants shall take out and maintain and shall cause any sub-contractor to take out and maintain such insurances as are necessary to cover the liability of the Consultants or, as the case may be, of such sub-contractor in respect of personal injury or death arising out of or in the course of or caused by the performance of the Contract by the Consultants and in respect of injury or damage to property, real or personal, arising out of or in the course of or by reason of the performance of the Contract..
- 14.3 The minimum liability limits shall be for not less than £3 million for Public Liability, not less than £5 million for Employers Liability if applicable and not less than £0.25 million for Professional Indemnity, for any one occurrence or series of occurrences arising out of the same event to be maintained for a period of a least 6 years.
- 14.4 As and when reasonably required so to do by the Employer, the Consultants shall produce and shall cause any sub-contractor to produce for inspection by the Employer documentary evidence that the insurances required herein are properly maintained. On any occasion the Employer may (but not unreasonably or vexatiously) require to have produced for its inspection the policy or policies and premium receipts in question.
- 14.5 Should the Consultants or any sub-contractor make default in insuring or in continuing or in causing to insure as provided herein the Employer may itself insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any money due or to become due to the Consultants or such amount shall be recoverable from the Consultants by the Employer as a debt.

15 Termination

- 15.1 The Employer may at any time by notice in writing terminate the Contract forthwith, if the Consultants are in default of any obligation under the Contract and:

- 15.1.1 the default is capable of remedy and the Consultants shall have failed to remedy the default within thirty (30) days of written notice to the Consultants specifying the default and requiring its remedy; or
 - 15.1.2 the default is not capable of remedy.
- 15.2 The Employer may at any time by notice in writing summarily determine the Contract without compensation to the Consultants if the Consultants shall due to bankruptcy or insolvency be prevented or delayed in performing the Service provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the Employer.
- 15.3 The Employer shall be entitled to terminate the Contract and to recover from the Consultants the amount of any loss resulting from such termination if the Consultants or any person on its behalf shall have offered or given or agreed to give any inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer or if like acts shall have been done by any person employed by the Consultants or acting on its behalf (whether with or without the knowledge of the Consultants) or if any relation to any contract with the Employer the Consultants or any person employed by the Consultants or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- 15.4 The Consultants may at any time by notice in writing terminate the Contract if the Employer is in default of its obligations under Clause 9 and the Employer shall fail to remedy such default within thirty (30) days of written notice to the Employer specifying the default and requiring its remedy.
- 15.5 In the event of any termination of the Contract whether under this Clause or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Employer under the Contract or otherwise, the Employer shall be entitled to obtain a refund of any Price paid by the Employer in respect of any parts of the Service which have not been performed by the Consultants in accordance with the terms of the Contract.
- 15.6 Termination in accordance with this Clause 16 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

16 Suspension of the Contract

16.1 If at any time the Employer decides to postpone or suspend the Service, it may thereupon by not less than one months notice in writing to the Consultants, suspend the Contract and upon any such suspension the Consultants shall be entitled to payment of any such part of the Price as shall be commensurate with the Service rendered up to the date of suspension or termination PROVIDED THAT:

16.1.1 If the Employer so requires at any time within the period of 12 months of such suspension the Consultants shall resume the performance of the Service in accordance with the terms of the Contract; or

16.1.2 If any such suspension extends beyond the period of 12 months the Consultants shall not be required to resume performance of the Service other than on terms to be agreed between the parties and the contract shall be terminated with immediate effect.

17 Assignment

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

The Consultant shall be responsible for the acts and omissions of its sub-Consultants as though they are its own.

18 Waiver

18.1 The failure of either party at any time to enforce any provision of the Contract shall in no way affect its rights thereafter to require complete performance by the other party nor shall the waiver of any breach of any provision or be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself.

19 Resolution of disputes

19.1 The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to the Contract. If any dispute cannot be settled amicably through ordinary negotiations then it shall in the first instance be referred to The Managing Director for the Consultants and to The Director of Environment for the Employer for discussion and resolution.

19.2 Each party will use all reasonable endeavours to reach a negotiated resolution to the dispute through the above dispute resolution procedure. If the dispute is not resolved at the meeting of The Managing Director for the Consultants and Director of Environment for the Employer, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ('the Model Procedure').

- 19.3 To initiate a mediation, a party must give notice in writing to the other party requesting a mediation.
- 19.4 The procedure in the Model Procedure will be amended to take account of:
- 19.4.1 any relevant provisions in the Contract;
- 19.4.2 any other agreement which the parties may enter into in relation to the conduct of the mediation ('Mediation Agreement').
- 19.5 Nothing in this Clause 19 shall prevent either party at any time, in cases where injunctive, declaratory or other equitable relief is required, from commencing proceedings and pursuing claims for such relief before the courts of England and Wales.

20. Force Majeure

- 20.1 For the purposes of this Contract the expression "Force Majeure" shall mean anything affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control. Any act, event, omission, happening or non-happening will only be considered to be Force Majeure if it is not attributable to the wilful act or neglect of or failure to take reasonable precautions of the affected party, its agents or employees.
- 20.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 20.3 Each party hereto agrees to give notice forthwith to the other on becoming aware of an event of Force Majeure.
- 20.4 If the party has complied with clause 20.3 its performance under the Contract will be suspended for the period that the Force Majeure event continues, and the party will have an extension of time for performance which is reasonable.

- 20.5 As regards such delay or stoppage:
- 20.5.1 any costs arising from the delay or stoppage will be borne by the party incurring those costs;
 - 20.5.2 either party may, if the delay or stoppage continues for more than 90 continuous days, terminate the Contract with immediate effect on giving written notice to the other and neither party will be liable to the other for such termination; and
 - 20.5.3 the party claiming the Force Majeure event will take all necessary steps to bring the Force Majeure event to a close or to find a solution by which the Contract may be performed despite the Force Majeure event.

21 Severability

- 21.1 Should any provision of the Contract be or become unlawful then it shall be treated as of no effect and the remaining provisions shall be construed so far as possible to give effect to the intention of the Contract.

22 Health and Safety

- 22.1 The Consultants shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by the Consultants, the Employer's employees and members of the public, and shall comply with the requirements of the Health and Safety at Work Act 1974 and of any other Acts, Regulations or Orders pertaining to Health and Safety at work or any re-enactment thereof.
- 22.2 Whilst carrying out the Service the Consultants shall comply with the Employer's general statement of safety policy and with any lawful requirements of the Project Manager.
- 22.3 If during the performance of the Contract the Health and Safety of any person is endangered then the Consultants shall cease work and take immediate steps to remedy the situation.
- 22.4 The Consultants shall inform the Employer of all incidents and/or accidents connected with the Contract and that occur during the performance of the Contract.

23 Equalities and Diversity

- 23.1 The Consultants warrant that there shall be no discrimination by them against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.
- 23.2 The Consultants shall in all matters arising in the performance of the Contract comply with the provisions of all legislation relevant to Equalities and

Diversity, (including but not limited to the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005, the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and the Employment Equality (Age) Regulations 2006) and any extensions, re-enactments or amendments made thereunder.

23.3 The cost to the Consultants in meeting the requirements of this Clause 23 shall be included in the Price.

23.4 The Employer shall be entitled at the Employer's expense to inspect such books, accounts and records belonging to the Consultant as are necessary to demonstrate compliance with this Clause 23.

24 Contracts (Rights of Third Parties) Act 1999

24.1 None of the provisions of the Contract are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to the Contract.

25 FOIA and EIR

25.1 The Consultants acknowledge that the Employer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Employer (at the Consultants' expense) to enable the Employer to comply with these information disclosure requirements.

25.2 The Consultants shall and shall procure that their sub-contractors shall:

25.2.1 transfer any request for information to the Employer as soon as practicable after receipt and in any event with two working days of receiving a request for information;

25.2.2 provide the Employer with a copy of all information in its possession or power in the form that the Employer requires within seven working days (or such other period as the Employer may specify) of the Employer requesting that information; and

25.2.3 provide all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to a request for information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the EIR.

25.3 The Employer shall be responsible for determining at its absolute discretion whether any information:

25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or

25.3.2 is to be disclosed in response to a request for information;

and in no event shall the Consultants respond directly to a request for information unless expressly authorised to do so by the Employer.

25.4 The Consultants acknowledge that the Employer may be obliged under the FOIA or the EIR to disclose information:

25.4.1 without consulting with the Consultants; or

25.4.2 following consultation with the Consultants and having taken their views into account.

26 Data Protection Act 1998

26.1 The Consultants shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.

26.2 The Consultants shall not disclose Personal Data to any third parties other than:

26.2.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order to carry out the Service; or

26.2.2 to the extent required under a court order

provided that disclosure under 26.2.1 is made with the approval of the Employer and subject to written terms no less stringent than the terms contained in this Clause and that the Consultants shall give notice in writing to the Employer of any disclosure of Personal Data it or a sub-contractor may make under 26.2.2 immediately it is aware of such a requirement.

26.3 The Consultants shall indemnify and keep indemnified the Employer against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause by the Consultants and/or any act or omission of any sub-contractor.

26.4 In this clause "Personal Data" means personal data as defined in the Data Protection Act 1998 that is supplied to the Consultants by the Employer or obtained by the Consultants in the course of performing the Service.

26.5 The Consultants shall grant to the Employer the right of reasonable access to all records of Personal Data and shall provide reasonable assistance at all times during the currency of this Contract to enable the Employer to ensure the quality and security of data collected.

27. Variation

27.1 The Contract shall not be varied or amended unless such variation or amendment has been agreed in writing and signed by the Employer and the Consultants.

28. Notices

- 28.1 Any notice to the Consultants shall be deemed to be sufficiently served if given or left in writing at their usual or last place of abode or business, and proof of postage in pre-paid letter post of any notice to the Consultants at their usual or last place of abode or business, shall be sufficient evidence of its receipt by them.

29. Law and Jurisdiction

- 29.1 The Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.