

BSG Ecology Ltd – Conditions of Business

1. Interpretation

1.1 Definitions

In these Conditions, the following definitions apply:

“BG Assessment” a written report prepared by BSG Ecology under a BG Instruction which assesses projected or existing biodiversity gain in relation to a Site or Sites or which reviews a third party’s report which assesses projected or existing biodiversity gain in relation to a Site or Sites.

“BG Assessment Assumptions and Limitations Document” the document with this title applicable where the Services are or include a BG Instruction.

“BG Instruction” an instruction provided to BSG Ecology forming or being part of the Services to be delivered relating to provision of biodiversity gain in relation to any Site or Sites.

“BSG Ecology” a limited company registered in England and Wales with company number 12142513, trading as **“BSG Ecology”**.

“BSG Ecology Report” a report to be prepared and delivered to the Client under the Services which shall when the Services include a BG Instruction comprise of or include a BG Assessment.

“Business Day” a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“Client” the person or firm who purchases Services from BSG Ecology.

“Client Materials” any document, data or information in any form (including information contained in emails) provided by or on behalf of the Client to BSG Ecology.

“Client Provided Information” information that is included or referenced in the Fee Proposal or included within any response to preliminary enquiries received by BSG Ecology prior to a Contract coming into existence.

“Conditions” these terms and conditions, as amended from time to time.

"Contract" the contract for the supply of Services by BSG Ecology to the Client comprising these Conditions the Fee Proposal and where the Services are or include a BG Instruction the BG Assessment Assumptions and Limitations Document.

"Deliverables" any reports or other documentation to be produced by BSG Ecology for the Client as part of the Services including but not limited to any BSG Ecology Report.

"Fee" the amount payable by the Client to BSG Ecology for the supply of the Services as set out in the Fee Proposal as the Fee may thereafter be revised as provided for by Conditions 5.9 or 5.10.

"Fee Proposal" BSG Ecology's response to the Client's request for a proposal confirming the basis upon which the Services will be provided to the Client including the basis upon which Fees shall be calculated and applied.

"Force Majeure Event" an event satisfying the description of any of the events referred to in Condition 12.1(a).

"Intellectual Property Rights" all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 right, topography rights, moral 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 all similar or equivalent rights or forms of protection in any part of the world.

"Licences" as defined at Condition 9.6 and **"Licence"** shall be construed accordingly.

"Metric" the biodiversity metric calculation tool adopted by Government with the version used for the purpose of a BG Instruction being confirmed in the BG Assessment.

"Metric User Guide" the user guide published by Government in relation to the Metric.

"Necessary Consents" all consents, licences or permissions of any person having an interest or right in or over the Site who by the lawful exercise of their powers given by such interest or right could prevent or impede the provision of the Services in relation to the Site or which may from time to time be necessary to provide the Services in accordance with the terms of the Contract and to use the Site for the purposes authorised by the Contract.

“Order” the Client’s approval of the Fee Proposal which must be communicated in writing and which will constitute approval on the part of the Client to the Fee Proposal, these Conditions and where relevant the BG Assessment Assumptions and Limitations Document.

“Safety Health & Environment (“SHE”) Form A” a document referenced with this title provided to the Client together with the Fee Proposal.

“Services” the services, including any Deliverables, to be provided by BSG Ecology to the Client as described in the Fee Proposal subject to any subsequent amendment made in accordance with Condition 5.9.

“Site” any site relevant to the Services provided or to be provided.

“Statutory Provision” any statute (including wildlife legislation) or statutory instrument, regulation, rule or order made under any statute or directive having the force of law which is relevant to the provision of the Services or performance of any obligations under the Contract.

“Third Party Materials” any document, data or information in any form (including information contained in emails) provided by or on behalf of the Client to BSG Ecology and which originates from a third party.

“VAT” value added tax.

1.2 Construction

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate, unincorporated body, public body or other entity (whether or not having separate legal personality);
- (b) a reference to a party includes its representatives, successors or permitted assigns;
- (c) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (d) a reference to **writing** or **written** includes faxes and e-mails;

- (e) a reference to any Statutory Provision is a reference to it as originally enacted or thereafter as amended, extended or re-enacted from time to time;
- (f) headings in any document comprising part of the Contract shall not form part of the Contract;
- (g) footnotes included in the BG Assessment Assumptions and Limitations Document shall form part of the Contract; and
- (h) should the scope of the Services require the preparation of a BG Assessment (or a review of a third party BG Assessment) involving more than one Site, then the BG Assessment Assumptions and Limitations Document shall have equal application to each Site.

2. Basis of Contract

- 2.1 Except to the extent that BSG Ecology otherwise expressly agrees in writing, these Conditions apply to all Services provided by BSG Ecology to the Client to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No such terms shall apply to the Contract and no Condition of the Contract may be varied or any other variation made without the written agreement of BSG Ecology.
- 2.2 Where the Services are or are to include a BG Instruction the BG Assessment Assumptions and Limitations Document is incorporated into and forms part of the Contract.
- 2.3 Any Fee Proposal by BSG Ecology to provide Services shall not constitute an offer available for acceptance by the Client and is only valid for the period stated therein or, if no such period is stated, for a period of three months from the date of issue.
- 2.4 If the Fee Proposal is not confirmed by the Client as approved within the period of validity referred to in Condition 2.3 it shall immediately lapse, unless BSG Ecology has agreed to a time extension for a period confirmed in writing to the Client by BSG Ecology.
- 2.5 A Contract shall only come into effect following receipt by BSG Ecology of the Client's Order confirming that the Fee Proposal is approved by the Client. BSG Ecology will thereupon be entitled to accept the Client's Order and in doing so it will then proceed to provide the Services under a Contract with the Client. That confirmation may be given in writing or orally and on the date it is communicated to the Client the Contract shall have effect.

- 2.6 The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of BSG Ecology which is not set out in writing in or incorporated in the Fee Proposal or where relevant the BG Assessment Assumptions and Limitations Document and any illustrations contained in BSG Ecology's catalogues or brochures which are issued or published are for the sole purpose of giving an approximate indication of the Services described in them.

3. Supply of Services

- 3.1 BSG Ecology shall perform the Services with all reasonable care and skill. If BSG Ecology fails to perform the Services in accordance with the Contract, the Client shall give BSG Ecology an opportunity to, at BSG Ecology's option, rectify any errors or other faults or to re-perform the Services.
- 3.2 BSG Ecology shall have the right to make any changes to the Services which are necessary to comply with any applicable legislation, safety requirements, Statutory Provision and/or Necessary Consents, or which do not materially affect the nature or quality of the Services.
- 3.3 The Services are to be delivered on the basis that any statements of fact and any opinions expressed in a BSG Ecology Report are to be read and construed taking into account any qualifications drawn to the Client's attention advised in correspondence or other documents provided to the Client by BSG Ecology and (where a BSG Ecology Report includes or comprises a BG Assessment) that BSG Ecology Report is in the case of the BG Assessment only delivered to the Client to be read and construed in accordance with the assumptions and limitations provided for in the BG Assessment Assumptions and Limitations Document.
- 3.4 Without prejudice to the generality of Condition 3.3 the Client acknowledges and agrees that:
- (a) to the extent that the Deliverables do not comprise a BG Instruction the Deliverables shall be based on the state, condition and character of the Site and its habitats at the time specified in the relevant BSG Ecology Report; and
 - (b) where the Deliverables are or include the delivery of a BG Assessment then that BG Assessment shall be based upon the assumptions and limitations and any other terms and conditions provided for within the BG Assessment Assumptions and Limitations Document.
- 3.5 The Client further acknowledges that information prepared referencing the Metric and the use in the preparation of a BG Assessment of the Metric User Guide are in both cases references to the Metric and Metric User Guide with the version used for the

purpose of a BG Instruction being confirmed in the BG Assessment and BSG Ecology's calculations shall not unless expressly agreed in writing by BSG Ecology be updated by BSG Ecology should that Metric and/or Metric User Guide be superseded during or following commencement of the provision of the Services.

4. Client's obligations

- 4.1 The Client warrants to BSG Ecology that Client Provided Information was at the time at which it was provided complete and accurate and without any material omissions and unless qualified in writing by the Client (including as to any change of circumstances that are material to the provision of the Services) prior to the approval of the Order by BSG Ecology the Client is deemed to warrant the continuing completeness and accuracy of the Client Provided Information at the date BSG Ecology commences to provide the Services and that at that time there are no material changes in circumstances that BSG Ecology ought to be made aware of.
- 4.2 In the event that responses to preliminary enquires made of the Client by BSG Ecology are received by BSG Ecology subsequent to a Contract coming into effect the information provided in the Client's responses shall be deemed to be warranted as complete and accurate and without any material omissions at the time the responses are provided.
- 4.3 The Client shall:
- (a) where requested to do so by BSG Ecology, provide to BSG Ecology (completed to the best of the Client's knowledge and belief) a SHE Form A as provided by BSG Ecology with the Fee Proposal, BSG Ecology having no obligation to access any Site without first being provided with a completed SHE Form A;
 - (b) complete and return (if not already completed and returned) the Client's response to any preliminary enquiries that BSG Ecology has made in preparation for the performance of the Services;
 - (c) co-operate with BSG Ecology in all matters relating to the Services;
 - (d) provide BSG Ecology, its employees, agents, consultants and subcontractors, with access to any Site, office accommodation and other facilities as reasonably required by BSG Ecology;
 - (e) provide BSG Ecology (for retention and use by BSG Ecology) with such information and materials as BSG Ecology may reasonably require in order to supply the Services, including the maps and plans required in an appropriate form and at an appropriate scale, under their own copyright,

together with the OS licence number, and ensure that such information is accurate in all material respects. If the Client fails to provide any necessary information, BSG Ecology may where possible (but is not obliged to) obtain such information and shall be entitled to recover the costs of obtaining such information from the Client;

- (f) make any Site available for unhindered and safe access by BSG Ecology when required by BSG Ecology in the course of the supply of the Services;
- (g) obtain and maintain all Necessary Consents which may be required before the date on which the Services are to start; and
- (h) pay the Fee and all other expenses payable by the Client in accordance with the Contract.

4.4 In preparation for the provision of and in the course of provision of the Services BSG Ecology shall be entitled to rely upon and be under no duty to validate or carry out any other form of verification as to the accuracy and completeness of:

- (a) responses given to preliminary enquiries;
- (b) any Client Materials made available to BSG Ecology; and
- (c) any Third Party Materials;

except and only to the extent that BSG Ecology has confirmed otherwise in writing.

4.5 The Client (acknowledging the provisions of Condition 4.10) undertakes to update BSG Ecology in the event that the Client becomes aware of any inaccuracy or change in circumstances that may have an impact upon BSG Ecology's conclusions to be expressed in any BSG Ecology Report.

4.6 The Client is advised to ensure that it has enforceable rights against any third party responsible for any Client Materials or Third Party Materials in the event that any circumstances arise in which any Client Materials or any Third Party Materials relied upon by BSG Ecology is discovered to be unreliable or has not been prepared with due skill and care. BSG Ecology (without obligation to do so) may request clarification of any issues it has with information provided by or on behalf of the Client and the Client when so requested shall take all reasonable steps requested of it to obtain verification of any information brought into question by BSG Ecology.

4.7 Where BSG Ecology obtains from a third party source information that is then taken into account in the provision of the Services or where information ordinarily taken into account is for any reason not available, without prejudice to the duty upon BSG Ecology

to provide the Services with reasonable skill and care, the Client accepts that BSG Ecology is entitled to rely upon the accuracy and completeness of all such information obtained by BSG Ecology and shall not be responsible for its failure to take into account information that BSG Ecology could not be provided with or reasonably obtain for the purpose of completing the Services.

- 4.8 The Client warrants that it has authority to use and publicise and/or allow to be used and publicised by a third party including BSG Ecology, all Client Materials and Third Party Materials which it provides to BSG Ecology and/or approves for publication and any such documents are accurate and will not infringe the rights of any third party. The Client agrees to indemnify BSG Ecology against all costs, expenses, charges and damages, incurred by BSG Ecology as a result of legal action, proceedings or claims brought against BSG Ecology as a result of using or publicising any documents and/or materials which have been provided by and/or approved by the Client for use and/or publication by BSG Ecology.
- 4.9 BSG Ecology shall not be liable to the Client, if BSG Ecology's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client, its employees, agents or sub-contractors or any third party or any failure by the Client to perform any relevant obligation including the Client's failure to pay BSG Ecology the sums payable in accordance with Condition 5.
- 4.10 BSG Ecology shall not be liable to the Client in the event that there is any error or misstatement of information comprised within any Client Materials or Third Party Materials that has an impact upon the Services or the content of BSG Ecology's Report. In the event that BSG Ecology is made aware of or becomes aware of any circumstances to which this Condition 4.10 applies in the course of the provision of the Services and this leads to the need for any part of the Services to be reformed BSG Ecology shall be entitled to suspend the provision of the Services pending agreement with the Client to any changes that prove necessary or desirable including agreement with the Client as required by BSG Ecology to amendment to the Fee to cover additional work that may be required.

5. Payment

- 5.1 In consideration of the provision of the Services the Client undertakes to BSG Ecology to pay the Fee and all other sums that may become payable under the Contract.
- 5.2 VAT will, where chargeable, be paid on the Fee and all other sums payable under the Contract.

- 5.3 Where the Fee is expressed as an estimate, the Fee shall be calculated in accordance with BSG Ecology's fee rates, as set out in the Fee Proposal or (if none) in accordance with BSG Ecology's standard rates from time to time.
- 5.4 Unless stated otherwise in the Fee Proposal, BSG Ecology shall be entitled to charge the Client, in addition to the Fee, for any expenses reasonably incurred by the individuals whom BSG Ecology engages in connection with the Services including travelling expenses, accommodation costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by BSG Ecology for the performance of the Services, and for the cost of any materials and/or provision of data. Travelling expenses will be charged at a rate per mile or as otherwise to be incurred as set out in the Fee Proposal or (if none) in accordance with BSG Ecology's standard rates from time to time.
- 5.5 BSG Ecology reserves the right to increase its fee rates by giving notice to the Client with effect from 1 January of each year and to the extent that Fees payable under the Contract are referenced to BSG Ecology's standard rates referred to in Condition 5.4 the adjusted rates shall apply to the Contract from that date.
- 5.6 The Fee shall fall due for payment on the date or dates set out in the Fee Proposal or as otherwise agreed in writing between the Client and BSG Ecology, and BSG Ecology shall invoice the Client accordingly. If no such payment date or dates have been agreed, BSG Ecology may invoice the Client monthly for Services performed.
- 5.7 Invoices shall be paid in full no later than 30 days following the date of the invoice and time of payment shall be of the essence of the Contract.
- 5.8 Subject to Conditions 5.9 and 5.11 the Client may at any time issue a written request to BSG Ecology for the variation of the Services.
- 5.9 If BSG Ecology is able to comply with a request by the Client under Condition 5.8 and considers that this would require an increase in the Fee then prior to complying with the request (save in the case of an instruction that in the opinion of BSG Ecology requires to be addressed urgently) BSG Ecology will provide to the Client an estimate of the increase in the Fee in the form of a proposal to be agreed in writing between the parties. Once agreed the Fee payable under the Contract shall be adjusted accordingly. Should BSG Ecology not receive written agreement to the Fee as revised or notification from the Client that the Client wishes to withdraw the request for a variation to the Services within 14 days of the date of submission of the revised estimate the Client will be deemed to have accepted the estimate which shall thereupon apply to the Contract.
- 5.10 Where under Condition 5.9 BSG Ecology has agreed to a request for a variation to the Services made by the Client and the request requires to be addressed urgently then in

such circumstances any revision to the Fee shall be discussed and agreed (both parties acting reasonably) as soon as practicable following the making of the request.

5.11 If the Client modifies, varies and/or cancels the Services (without prejudice to any other right or remedy of BSG Ecology including any right to adjust the Fee) the Client will:

- (a) continue to be subject to any obligation to reimburse BSG Ecology in respect of financial commitments assumed by BSG Ecology on the Client's behalf to the extent that BSG Ecology is not able to obtain modification, variation or cancellation of a commitment; and/or
- (b) indemnify BSG Ecology in relation to any cancellation charges or additional charges incurred in connection with the securing of agreement of that third party to cancellation or a variation to the charges that BSG Ecology will incur.

5.12 If any sum payable under the Contract is not paid within 30 days of the date of the relevant invoice, without prejudice to BSG Ecology's other rights under the Contract:

- (a) BSG Ecology may suspend the performance of the Services until all outstanding amounts are paid or terminate the Contract in accordance with Condition 10.1;
- (b) BSG Ecology reserves the right to charge interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum over HSBC Bank plc base rate from time to time.

5.13 If there is an error in the calculation of the Fee by BSG Ecology, whether in the Fee Proposal, the invoice or elsewhere, BSG Ecology reserves the right to rectify the error and, if necessary, issue a further invoice or credit note.

5.14 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law or as otherwise agreed in writing by BSG Ecology and the Client shall not be entitled to apply any credit, set-off or assert any counterclaim against BSG Ecology in order to justify withholding payment of any such amount in whole or in part. BSG Ecology may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by BSG Ecology to the Client.

6. Intellectual Property Rights

6.1 All rights, including Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by BSG Ecology.

- 6.2 Upon payment in full of the Fee and all other amounts payable by the Client under the Contract BSG Ecology shall, subject to Condition 6.3, grant the Client a non-exclusive, non-transferable licence to use the Deliverables for any purposes set out in the Fee Proposal or as otherwise agreed in accordance with Condition 7.2.
- 6.3 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on BSG Ecology obtaining a written licence from the relevant licensor on such terms as will entitle BSG Ecology to license such rights to the Client.

7. Restrictions on use of Services

- 7.1 The Services provided under the Contract including any advice and opinions expressed by BSG Ecology will be given for the sole benefit of and can be relied on by the Client only. No other person may use or rely on the Deliverables without BSG Ecology's prior written consent.
- 7.2 The Deliverables will be prepared for the purposes if any set out in the Fee Proposal or that have been communicated to and accepted in writing by BSG Ecology. BSG Ecology will not be liable for any other use the Client or any party associated with the Client may make of the Deliverables.
- 7.3 The Client acknowledges that information provided and opinions and conclusions included within any BSG Ecology Report will accordingly become less reliable over time as a consequence of a number of factors including changes to the Site and the character of its habitats and species and new species colonising the Site or its surroundings. The Client acknowledges that the Deliverables as provided for in the Fee Proposal shall (at the time these are prepared by BSG Ecology in the performance of the Service) be sufficient for the Clients purposes and BSG Ecology's obligations to provide the Services shall be satisfied on this basis.

8. Exclusions and Limitations of liability

- 8.1 Nothing in these Conditions limits any liability which cannot legally be limited, including BSG Ecology's liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 8.2 Subject to Condition 8.1:
- (a) BSG Ecology shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss

of profit, or any indirect or consequential loss arising under or in connection with the performance of the Contract including any such losses that may result from a deliberate or negligent breach of the Contract by BSG Ecology or any of its employees, agents consultants or subcontractors or any outcome from the Client's use of the Deliverables where this arises from circumstances in which BSG Ecology's responsibility or scope of responsibility has been qualified through reliance upon the BG Assessment Assumptions and Limitations Document or any other assumptions or limitations expressed in writing advised to the Client by BSG Ecology.

- (b) BSG Ecology's total liability to the Client in respect of all other claims (connected or unconnected) and losses in any consecutive twelve (12) month period arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, a deliberate breach of the Contract by BSG Ecology, its employees, agents or subcontractors shall not exceed the greater of:
 - (i) the total amounts payable by the Client under the Contract in that period; or
 - (ii) £100,000, or such other amount agreed between the Client and BSG Ecology in writing.
- (c) BSG Ecology's liability under the Contract shall be limited to that proportion of the costs and losses which it would be just and equitable to require BSG Ecology to pay having regard to the extent of BSG Ecology's responsibility for the same, and on the basis that any other contractor and/or consultants of the Client who are involved in the overall project shall be deemed to have entered into an agreement with the Client in similar terms to the Contract (*mutatis mutandis*) and shall be deemed to have paid their just and equitable proportion of costs and losses having regard to their responsibility to the Client.

8.3 Except as expressly set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9. Restrictive Covenant and Confidentiality

9.1 In order to protect the confidential information and business connections of BSG Ecology, the Client covenants with BSG Ecology that it shall not (and shall procure that no other person who is a subsidiary or holding company of the Client or otherwise

directly or indirectly associated with or connected to the Client shall) for the duration of the Contract and for a period of 12 months after the termination or expiry of the Contract, solicit or entice away (or attempt to solicit or entice away) from the employment of or engagement by BSG Ecology, any person who is or was employed or engaged in providing the Services to the Client to a material extent without the prior written approval of BSG Ecology (such approval to be provided at the absolute discretion of BSG Ecology).

9.2 Each party undertakes that it shall not at any time during the continuance of the Contract, and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information where the other party so specifies in writing or which by its nature ought to be regarded as confidential, concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Condition 9.4 and in the case of BSG Ecology Condition 9.6.

9.3 The provisions of Condition 9.2 shall not apply to any confidential information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party in breach of this Condition 9);
- (b) the parties agree in writing is not confidential or may be disclosed;
- (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; or
- (d) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party.

9.4 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, agents or other representatives, contractors, subcontractors and advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract provided that party ensures that its employees, officers, agents or other representatives, contractors, subcontractors and advisers to whom it discloses the other party's confidential information comply with Conditions 9.2 and 9.5; or
- (b) as may be required by law, a court of competent jurisdictions or any government or regulatory authority; or

- (c) in the case of any disclosure of confidential information by a named licensee or by BSG Ecology on behalf of that person where the disclosure made is in compliance with a requirement of the relevant Licence.

9.5 Subject to Condition 9.6 neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.6 Where BSG Ecology becomes aware of or has a reasonable belief that the Client or any employee, officer, agent, or other representative, contractor or advisor has breached or is likely to breach any legislation, regulation, court order or term or condition of any licence, permit or consent ("**Licences**") BSG Ecology shall be entitled to bring all relevant information as BSG Ecology sees fit to the attention of the relevant authority including (without limitation) the police or the statutory nature conservation body, and shall also be entitled to request the relevant authority to remove from any Licence the name of any officer, director or employee of BSG Ecology which appears on such Licence.

10. Termination

10.1 Without limiting its other rights or remedies, BSG Ecology may terminate the Contract with immediate effect by giving written notice to the Client, if:

- (a) BSG Ecology is refused or for any reason beyond BSG Ecology's reasonable control fails to obtain access to any Site or to access any Site would place any person requiring access to be subject to material risk to the person or property and the refusal or other restriction on access or risk is not remedied within a reasonable period;
- (b) the Client fails to perform any of its obligations under the Contract, including the failure to pay any amount due under the Contract on the due date for payment;
- (c) there is a change in a Statutory Provision and BSG Ecology's provision of the Services would be in breach of that Statutory Provision;
- (d) BSG Ecology becomes aware or reasonably suspects that the Client is in breach of or may breach any Statutory Provision applicable to the Client or to the provision of any part of the Services (including, for the avoidance of doubt, wildlife legislation) or any term or condition of any Licence;
- (e) the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual)

is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (f) the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (h) the Client (being an individual) is the subject of a bankruptcy petition or order;
- (i) a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within days;
- (j) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company);
- (k) a floating charge holder over the assets of the Client (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (l) a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;
- (m) any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 10.1(c) to Condition 10.1(k) (inclusive);

- (n) the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (o) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- (p) the Client purports to assign the benefit of the Contract to any other party or enter into any other dealings in breach of Condition 12.2(b).

11. Consequences of termination or expiry

On termination or expiry of the Contract for any reason:

- 11.1 the Client shall immediately pay to BSG Ecology all of BSG Ecology's outstanding unpaid invoices and interest and, in respect of Services performed but for which no invoice has been submitted;
- 11.2 BSG Ecology shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 11.3 the Client shall cease to be entitled to use and shall promptly return to BSG Ecology any Deliverables which have not been fully paid for;
- 11.4 the accrued rights, remedies, obligations and liabilities of the parties as at termination or expiry shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 11.5 The following Conditions shall continue to apply to the parties notwithstanding termination or expiry of the Contract to the extent so provided:

Condition Number	Title
Condition 1	Interpretation
Condition 5.1 to 5.4, 5.6, 5.7 and 5.11 to 5.14	Payment
Condition 6.1 and 6.2	Intellectual Property Rights
Condition 8	Exclusions and Limitations on Liability

Condition 9	Restrictive Covenants and Confidentiality
Condition 11	Consequences of termination or expiry
Condition 12.2, 12.3, 12.4, 12.6, 12.8, 12.9 and 12.10	General

12. General

12.1 Force majeure

- (a) For the purposes of this Condition 12.1, "**Force Majeure Event**" means an event beyond the reasonable control of BSG Ecology including but not limited to strikes, lock- outs or other industrial disputes (whether involving the workforce of BSG Ecology or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, pandemic or epidemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) BSG Ecology shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents BSG Ecology from providing any of the Services for more than four weeks, BSG Ecology shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

12.2 Assignment and subcontracting

- (a) BSG Ecology may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of BSG Ecology, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3 Waiver

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.4 Severance

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.5 No partnership

Nothing in the Contract is intended to, nor shall be deemed to, constitute a partnership or joint venture of any kind between BSG Ecology and the Client, nor constitute BSG Ecology or the Client the agent of the other for any purpose. Neither BSG Ecology nor the Client shall have authority to act as agent for, or to bind, the other in any way.

12.6 Third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.7 Variation

Except as provided for in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.8 Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Fee Proposal.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by [fax or] email at the time of transmission, or if this time falls outside of business hours in the place of receipt, when business hours resume. In this Condition 12.8(b)(iii), business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.9 Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

12.10 Entire Agreement

- (a) These Conditions together with the Fee Proposal and where relevant the BG Assessment Assumptions and Limitations Document constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Subject to Condition 8.1 (Liabilities not excluded), each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.