



Department  
for Environment  
Food & Rural Affairs [www.gov.uk/defra](http://www.gov.uk/defra)

# **Contract for the Provision of Local Air Quality Management 2019 - 2023**

**Tender Reference: itt\_5572**

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# SECTION 1 FORM OF CONTRACT

## PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);

## AND

- (2) Bureau Veritas UK Limited (registered in England and Wales under number 01758622) whose registered office is Suite 308 Fort Dunlop, Fort Parkway, Birmingham, West Midlands B24 9FD

(each a “**Party**” and together the “**Parties**”).

## WHEREAS

Following a competitive tender process, the Authority wishes to appoint the Contractor to provide certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.

## NOW IT IS HEREBY AGREED as follows:

### 1. TERMS OF CONTRACT

- 1.1 The “**Contract**” comprises the following:

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
Schedule 2:	Prices
Schedule 3:	Change Control
Schedule 4:	Commercially Sensitive Information
Schedule 5:	Processing, Personal Data and Data Subjects
Schedule 6:	Non-Disclosure Agreement
Schedule 7:	Contractor and Third Party Software
Schedule 8:	Security Requirements, Policy and Plan
Schedule 9:	Contractor’s Tender

- 1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority’s electronic contract management system (“**Bravo**”).
- 1.3 The Contract starts on 10/06/2019 (the “**Commencement Date**”) and ends on 09/06/2023 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract until 09/06/2025 (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

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## TERMS AND CONDITIONS

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## A GENERAL PROVISIONS

### A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“**Affected Party**” means the Party seeking to claim relief in respect of a Force Majeure Event.

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

“**Approval**” and “**Approved**” means the prior written consent of the Authority.

“**Authorised Representative**” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“**Authority Data**” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

- (b) any Personal Data for which the Authority is the Controller.

**“Authority Premises”** means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

**“Authority Software”** means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

**“Authority System”** means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

**“BPSS”** means the HMG Baseline Personnel Security Standard for Government employees.

**“Bravo”** has the meaning given in paragraph 1.2 of the Form of Contract.

**“CCN”** means a change control notice in the form set out in Schedule 3.

**“Commencement Date”** means the date set out in paragraph 1.3 of the Form of Contract.

**“Commercially Sensitive Information”** means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans

which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Contract”** has the meaning given in paragraph 1.1 of the Form of Contract.

**“Contract Period”** means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

**“Contracting Authority”** means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7.

**“Contractor System”** means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

**“Control”** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly.

**“Controller”** has the meaning given in the GDPR.

**“Copyright”** means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

**“Data Protection Officer”** has the meaning given in the GDPR.

**“Data Subject”** has the meaning given in the GDPR.

**“Data Subject Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“Database Rights”** means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

**“Default”** means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

**“DPA 2018”** means the Data Protection Act 2018.

**“EIR”** means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“End Date”** means the date set out in paragraph 1.3 of the Form of Contract.

**“Equipment”** means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

**“Extension”** has the meaning given in paragraph 1.4 of the Form of Contract.

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

**“Force Majeure Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.

**“Form of Contract”** means Section 1 of the Contract.

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**“General Anti-Abuse Rule”** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“Halifax Abuse Principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**“HMRC”** means HM Revenue & Customs.

**“ICT Environment”** means the Authority System and the Contractor System.

**“Information”** has the meaning given under section 84 of the FOIA.

**“Initial Contract Period”** means the period from the Commencement Date to the End Date.

**“Intellectual Property Rights”** means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“ITEPA”** means the Income Tax (Earnings and Pensions) Act 2003.

**“Key Personnel”** mean those persons named in the Specification as key personnel.

**“Know-How”** means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

**“Law”** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.

**“LED”** means Law Enforcement Directive (Directive (EU) 2016/680).

**“Malicious Software”** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**“Material Breach”** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

**“Month”** means calendar month.

“**NICs**” means National Insurance Contributions.

“**Occasion of Tax Non-Compliance**” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Antabuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“**Personal Data**” has the meaning given in the GDPR.

“**Personal Data Breach**” has the meaning given in the GDPR.

“**Premises**” means the location where the Services are to be supplied as set out in the Specification.

“**Price**” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“**Processor**” has the meaning given in the GDPR.

“**Prohibited Act**” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;

- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 8.

**“Property”** means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

**“Purchase Order”** means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

**“Receipt”** means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

**“Regulations”** means the Public Contract Regulations 2015 (SI 2015/102).

**“Regulatory Body”** means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

**“Relevant Conviction”** means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.

**“Relevant Requirements”** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**“Relevant Tax Authority”** means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

**“Replacement Contractor”** means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**“Request for Information”** means a request for information under the FOIA or the EIR.

**“Results”** means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services.

**“Returning Employees”** means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

**“Security Policy Framework”** means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

**“Services”** means the services set out in Schedule 1 including any modified or alternative services.

**“Specification”** means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

**“SSCBA”** means the Social Security Contributions and Benefits Act 1992.

**“Staff”** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

**“Sub-Contract”** means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.

**“Tender”** means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services.

**“TFEU”** means the Treaty on the Functioning of the European Union.

**“Third Party IP Claim”** has the meaning given to it in clause E8.7 (Intellectual Property Rights).

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7.

**“Treaties”** means the Treaty on European Union and the TFEU.

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**“TUPE Information”** means the information set out in clause B17.1.

**“Valid Invoice”** means an invoice containing the information set out in clause C2.5.

**“Variation”** means a variation to the Specification, the Price or any of the terms or conditions of the Contract.

**“VAT”** means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

*In the Contract, unless the context implies otherwise:*

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

## **A2 The Authority’s Obligations**

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

## **A3 Contractor’s Status**

A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

#### **A4 Notices and Communications**

A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.

A4.2 If it is not returned as undelivered a notice served:

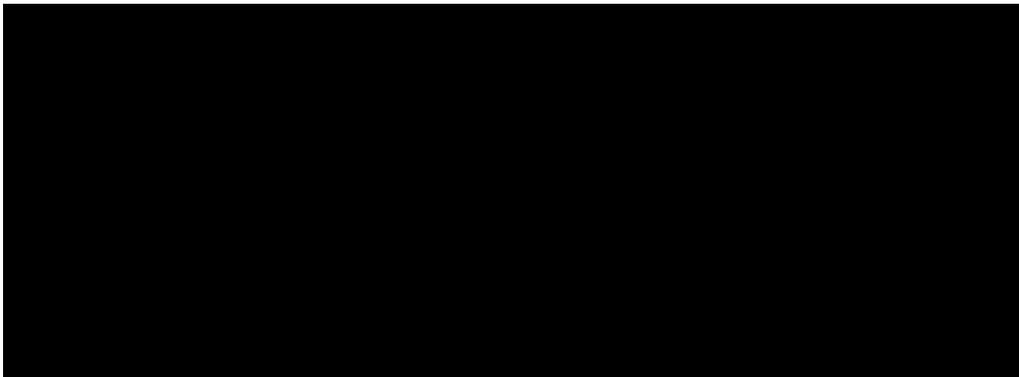
- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

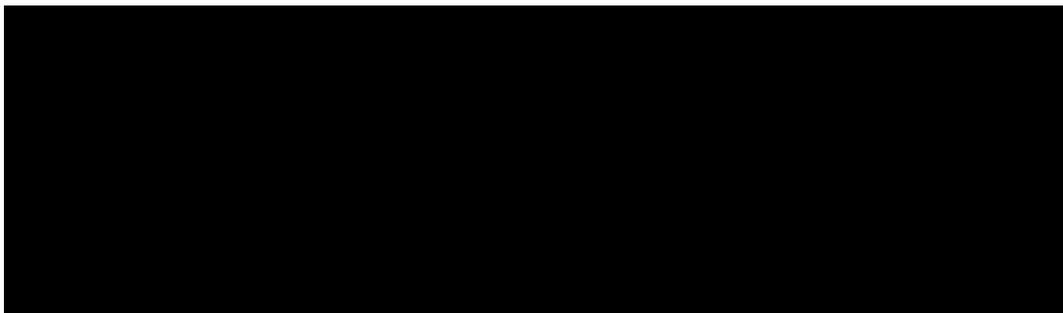
A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

- (a) For the Authority:



- (b) For the Contractor:





## **A5 Mistakes in Information**

- A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A6 Conflicts of Interest**

- A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

# **B. THE SERVICES**

## **B1 Specification**

- B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.

## **B2 Provision and Removal of Equipment**

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

### **B3 Delivery**

- B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.
- B3.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:
- (a) accept the installation; or
  - (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.
- B3.4 If the Authority rejects the installation pursuant to clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

- B3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any installation in accordance with clause B10.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.
- B3.6 During the Contract Period, the Contractor shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
  - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
  - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

#### **B4 Key Personnel**

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.
- B4.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

#### **B5 Contractor's Staff**

- B5.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.
- B5.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises,

specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final.
- B5.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

## **B6 Inspection of Premises**

- B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## **B7 Licence to Occupy Premises**

- B7.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B7.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay.
- B7.4 The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority.
- B7.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

## **B8 Property**

- B8.1 All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the

Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Offers of Employment**

- B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

## **B10 Employment Provisions**

- B10.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
  - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);
  - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
  - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B10.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Contractor shall give the Authority updated TUPE Information.
- B10.3 Each time the Contractor supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Contractor.

- B10.4 The Authority may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Authority, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
  - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
  - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B10.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.
- B10.7 This clause B10 applies during the Contract Period and indefinitely thereafter.
- B10.8 The Contractor undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

- (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## C PAYMENT

### C1 Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

### C2 Payment and VAT

- C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.
- C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- C2.5 Valid Invoices shall include:
  - (a) the Contractor's full name, address and title of the Contract;
  - (b) the Purchase Order number**and, if requested by the Authority:**
  - (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
  - (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
  - (e) identification of which individuals are Contractor's staff and which are SubContractors;
  - (f) the address of the Premises and the date on which work was undertaken;
  - (g) the time spent working on the Premises by the individuals concerned;

- (h) details of the type of work undertaken by the individuals concerned;
  - (i) details of plant or materials operated and on standby;
  - (j) separate identification of time spent travelling and/or meal or rest breaks; and
  - (k) where appropriate, details of journeys made and distances travelled.
- C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.
- C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.
- C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).
- C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.

- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address: accounts-payable.def@sscl.gse.gov.uk (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.
- C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.20 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.
- C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **C4 Price during Extension**

C4.1 Subject to Schedule 2 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## **D. STATUTORY OBLIGATIONS**

#### **D1 Prevention of Fraud and Bribery**

D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

D1.2 The Contractor shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Contractor shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

- D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

## **D2 Discrimination**

- D2.1 The Contractor shall:
- (a) perform its obligations under the Contract in accordance with:
    - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
    - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
    - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
  - (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### **D3 Rights of Third Parties**

- D3.1 The provisions of clauses B10.5 and E8.3 confer benefits on persons named in such provisions (together “**Third Party Provisions**”) other than the Parties (each person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).
- D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

### **D4 Health and Safety**

- D4.1 The Contractor shall perform its obligations under the Contract in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Authority’s health and safety policy while at the Authority’s Premises.
- D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority’s Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

### **D5 Environmental Requirements**

- D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority’s environmental, sustainable and ethical procurement policies (“**Environmental Policies**”) which require the Authority through its procurement and management of suppliers:
- (a) conserve energy, water, wood, paper and other resources and reduce waste;
  - (b) phase out the use of ozone depleting substances;
  - (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
  - (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
  - (e) reduce fuel emissions wherever possible;

- (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
- (b) HFCs and other gaseous and non-gaseous substances with a high global warming potential;

unless given written permission by the Authority to do so.

D5.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.

D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 The Contractor shall:

- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
- (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

## **D6 Timber and Wood Derived Products**

D6.1 For the purposes of clauses D6.1 to D6.8 the following terms shall have the following meanings:

- (a) **“Timber”** means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element, **for example, paper**. Timber and wood-derived products supplied or used in performance of the Services that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Services that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry;
- (b) **“Legal and Sustainable”** means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "*UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement*" (available at [www.gov.uk/government/publications/timber-definition-oflegal-and-sustainable](http://www.gov.uk/government/publications/timber-definition-oflegal-and-sustainable) or CPET). The edition current on the day the Contract is awarded shall apply;
- (c) **“FLEGT”** means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber;
- (d) **“FLEGT-licensed”** means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions only, as defined by a bilateral Voluntary Partnership Agreement (**“VPA”**) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government;
- (e) **“Recycled”** means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source;
- (f) **“Short-rotation coppice”** means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy; and
- (g) **“CPET”** means the UK Government’s Central Point of Expertise on Timber.

- D6.2 All Timber supplied or used by the Contractor in providing the Services (including all Timber supplied or used by Sub-Contractors) shall comply with Schedule 1 and shall originate from a forest source where management of the forest has full regard for:
- (a) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
  - (b) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
  - (c) safeguarding the basic labour rights and health and safety of forest workers
- (the “**Social Criteria**”).
- D6.3 If requested by the Authority and not already provided in its Tender, the Contractor shall give the Authority evidence that the Timber supplied or used in providing the Services complies with the requirements of Schedule 1 and with the requirements of the Social Criteria.
- D6.4 The Authority may at any time during the Contract Period and for 6 years after final delivery under the Contract require the Contractor to produce the evidence required for the Authority's inspection within 14 days of the Authority's written request.
- D6.5 The Contractor shall maintain records of all Timber delivered to and accepted by the Authority for 6 years from final delivery under the Contract.
- D6.6 The Authority shall decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber complies with Schedule 1 and complies with the requirements of the Social Criteria. If the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will: (a) verify the forest source of the timber or wood; and (b) assess whether the source meets the relevant criteria.
- D6.7 In the Contract "**Independent Verification**" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to *ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time)* or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to *ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time)* or equivalent.
- D6.8 The Authority may reject Timber that does not comply with Schedule 1 or with the Social Criteria. If the Authority rejects any Timber the Contractor shall supply alternative Timber which does comply at no additional cost to the Authority and without causing delay to delivery of the Services.

## **E PROTECTION OF INFORMATION**

### **E1 Authority Data**

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **E2 Data Protection**

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor.
- E2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- E2.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
    - (C) 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 the Authority or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

- (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

E2.5 Subject to clause E2.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

E2.6 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.

E2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

- E2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Authority determines that the processing is not occasional;
  - (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.
- E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Authority;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
  - (d) provide the Authority with such information regarding the Sub – processor as the Authority may reasonably require.
- E2.12 The Contractor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

E3.1 The Contractor shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

#### **E4 Confidential Information**

E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

E4.3 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6 and, if applicable, incorporating the requirements of clause E2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.4 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

E4.5 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.7 Clause E4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

- E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority's accounts;
  - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
  - (d) to any consultant, contractor or other person engaged by the Authority
- provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.
- E4.11 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.
- E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will cooperate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

## **E5 Freedom of Information**

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:
- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
  - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
  - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.
- E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

## **E6 Publicity, Media and Official Enquiries**

- E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Authority shall give the Contractor upon request copies of its written security procedures.
- E7.3 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
  - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

## **E8 Intellectual Property Rights**

E8.1 All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Contractor by or on behalf of the Authority (together with the Results, the "**IP Materials**")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2 The Contractor hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses E8.1(a) and (b). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor; and
- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses E8.1 (a) and (b),

and shall execute all documents and do all acts as are necessary to execute these assignments.

E8.3 The Contractor shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sublicense, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority (“**Indemnified Persons**”);
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (d) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.3, except to the extent that any such claim results directly from:
  - i) items or materials based upon designs supplied by the Authority; or
  - ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E8.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or Indemnified Person) arising from the performance of the Contractor’s obligations under the Contract (“**Third Party IP Claim**”), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

- E8.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3 (d) i) and ii).
- E8.7 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3(b) and G2.1(g)) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
  - (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority
  - (c) and if the Contractor is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.
- E8.9 The Contractor grants to the Authority and, if requested by the Authority, to a Replacement Contractor, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sublicense) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority (or the Replacement Contractor) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

## **E9 Audit**

- E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **E10 Tax Compliance**

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give the Authority:
    - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICS, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

## **F. CONTROL OF THE CONTRACT**

### **F1 Failure to meet Requirements**

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

### **F2 Monitoring of Contract Performance**

F2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

- F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Authority shall carry out a review of the performance of the Contractor ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.
- F2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

### **F3 Remedies for inadequate performance**

- F3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
  - (d) terminate the Contract in accordance with clause H2.
- F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.
- F3.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:
- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
  - (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
  - (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure

as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

#### **F4 Transfer and Sub-Contracting**

- F4.1 Except where clauses F4.6 and F4.7 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Subcontractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:
- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
  - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4 (a) in any Sub-Contract which it awards; and
  - (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.
- F4.5 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
  - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

- F4.6 Notwithstanding clause F4.1, the Contractor may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both clauses F4.7 and F4.8.
- F4.7 If the Contractor assigns the right to receive the Price under clause F4.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F4.8 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.
- F4.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under the Contract.
- F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F4.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F5 Waiver**

F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).

F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F6 Variation**

F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 6.

F6.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
- (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.

F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo. On the date it communicates acceptance of the CCN in this way the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.

F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F8 Remedies Cumulative**

F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **F10 Counterparts**

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# **G LIABILITIES**

## **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;

- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
  - (c) any breach of clauses D1, E1, E2 and E4;
  - (d) Schedule 8; or
  - (e) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed £2199411.58
- G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - (d) any compensation or interest paid to a third party by the Authority; and
  - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

G1.8 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact,

matter or circumstance of which it may become aware which would render such information to be false or misleading;

- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
  - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

### **G3 Force Majeure**

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, subcontractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
    - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
    - ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

# H DEFAULT, DISRUPTION AND TERMINATION

## H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

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

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

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

- (ii) a petition is presented for his bankruptcy; or
- (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **H2 Termination on Default**

- H2.1 The Authority may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:
- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
  - (b) the Default is not, in the opinion of the Authority, capable of remedy; or
  - (c) the Default is a Material Breach.
- H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

### **H3 Termination on Notice**

- H3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Contractor.

### **H4 Other Termination Grounds**

- H4.1 The Authority may terminate the Contract on written notice to the Contractor if:
- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
  - (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
  - (d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

### **H5 Consequences of Expiry or Termination**

- H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.
- H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H5.4 Save as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **H7 Recovery upon Termination**

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
  - (c) immediately vacate any Authority Premises occupied by the Contractor;
  - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
  - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H7.2 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

## **H8 Retendering and Handover**

- H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.

- H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

## **H10 Exit Procedures**

- H10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
  - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.
- H10.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.
- H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

## **H11 Knowledge Retention**

- H11.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational

requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

# I DISPUTES AND LAW

## I1 Governing Law and Jurisdiction

11.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## I2 Dispute Resolution

12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

12.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a nonbinding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language;  
and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

# SCHEDULE 1 SPECIFICATION

This Section sets out the background to the Authority's requirements.

## GLOSSARY

### SECTION 3: SPECIFICATION OF REQUIREMENTS

AIR-PT scheme	The QA/QC framework used to evaluate the performance of laboratories which supply and analyse NO <sub>2</sub> diffusion tubes
AQO	Air Quality Objectives
AQS	Air Quality Strategy
AQD2008	Directive 2008/50/EC of the European Parliament and of the Council of 21 <sup>st</sup> May 2008, on Ambient Air Quality and Cleaner Air for Europe.
AQMA	Air Quality Management Area
AP	Action Plan
APR	Annual Progress Report
ASR	Annual Status Report
AURN	Automatic Urban and Rural Air Quality Monitoring Network
Authority	Secretary of State for the Department of Environment, Food and Rural Affairs
authorities	Defra, GLA, SG, WG and DAERA collectively
CAZ	Clean Air Zone
Contract	The contract (set out in Appendix B) to be entered into by the Authority and the successful Tenderer.
COI	Central Office of Information
DA	Devolved Administrations
DDU	Data Dissemination Unit
DEFRA	Secretary of State for the Department of Environment, Food and Rural Affairs
DAERA	Department of Agriculture, Environment and Rural Affairs (Northern Ireland)
EC	European Commission
EU	European Union
EFT	The Road Transport Emission Factors Toolkit
Equipment	For the purposes of this Specification of Requirements 'equipment' refers to monitoring instruments, air conditioning units, housing or other associated equipment required for monitoring purposes.
FAQ	Frequently Asked Question
GLA	Greater London Authority
JAQU	Joint Air Quality Unit

KPI	Key Performance Indicator
LA	Local authority
LAs	Local authorities
LAQM	Local Air Quality Management
LLAQM	London Local Air Quality Management
LIP	Local Implementation Plan
LTP	Local Transport Plan
LSO	Local Site Operators
MAAQ	The Modelling Ambient Air Quality contract
NAW	National Assembly for Wales
NECD	The EU National Emissions Ceilings Directive (2001/81/EC)
Nitrogen dioxide diffusion tube	A monitoring device for measuring indicative concentrations of nitrogen dioxide
NO <sub>2</sub>	nitrogen dioxide
NO <sub>x</sub>	oxides of nitrogen
Nominated Officer	An officer nominated by the Authority as the contract manager for this Contract
NRW	Natural Resources Wales
PM <sub>10</sub>	particulate matter with a diameter of 10µm or less
PM <sub>2.5</sub>	particulate matter with a diameter of 2.5µm or less
PMF	Performance Management Framework
PR	Progress Report
QA/QC	Quality Assurance Quality Control Services
R&A	Review and Assessment
SG	Scottish Government
SO <sub>2</sub>	sulphur dioxide
The Act	Part IV the Environment Act 1995 which requires local authorities (LAs) in England, Scotland and Wales to Review and Assess the current and future quality of air in their areas periodically against the AQS Air Quality Objectives
The Order	Part III of the Environment (Northern Ireland) Order 2002 which requires local authorities in Northern Ireland to Review and Assess the current and future quality of air in their areas periodically against the AQS Air Quality Objectives
UK	United Kingdom
USA	Updating and Screening Assessment
WAQF	Welsh Air Quality Forum
WG	Welsh Government

This Section sets out the Authority's requirements.

## **1 Introduction**

- 1.1 The Secretary of State for Environment, Food and Rural Affairs (Defra), wishes to let the Technical Support and Reporting Contract to manage Local Air Quality Management (LAQM) in the UK to one supplier or consortium. It will cover the whole of the UK and will be let by the Authority on behalf of Central Government, the Devolved Administrations (DAs<sup>1</sup>), and the GLA. Under the contract, the Authority will offer no guarantees of any minimum level of work over the contract duration. Tasks under all work packages will be called off on an *ad hoc* basis through work orders.
- 1.2 The Contract will commence on 10 June 2019 for a period of four (4) years and if applicable will include a handover period with the current contractors of not less than one (1) month. There will be an option to extend the Contract by a further twenty four (24) months. The costs submitted should only be for a fixed price of four years. The cost for the optional extension of 24 months will be negotiated with the successful supplier if required. (For the avoidance of doubt, no Contract charges shall be payable by the Authority in respect of the handover services during the handover period. The Contractors will be responsible for their costs). Any new Contractors will take over full running and operation of the contract from 10 June 2019.
- 1.3 The Authority invites both individual contractors or consortia to tender for this contract providing the individual expertise of consortium members meet the specific requirements.

## **2 Content of the LAQM Technical Support and Reporting Contract**

- 2.1 The contract provides the co-ordination and technical support to all UK LAs so that they can carry out their statutory LAQM responsibilities consistently. Tasks will be called off on an ad-hoc basis through work orders. Some of these are considered to be core tasks, whilst others will only be required occasionally (see paragraph 2.3).
- 2.2 The Contractor will provide support to LAs via a helpdesk and website. The website will be the main way for LAs to access the authorities' Guidance documents, report templates, tools, FAQs and other relevant information and the contractor will be responsible for ensuring such materials are kept up to date and are fit for purpose. In addition the Contractor will also review and assess local

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<sup>1</sup> Following devolution and the establishment of devolved administrations, a UK research budget is still in place to cover all air quality research carried out by Defra and the devolved administrations. The resultant output of this research is used to inform policy at Defra and the devolved administrations. The devolved administrations are as follows: the Welsh Government (WG); the Northern Ireland Assembly, represented by the Department of Agriculture, Environment and Rural Affairs (DAERA); and the Scottish Government (SG). Every research contract, report and/or publication should name all funders of the research budget. However, in this specification references to Defra should be taken to include the devolved administrations.

authority statutory reports for the DAs and GLA. The Authority may also require up to 20% of English statutory reports to be appraised using a risk-based approach to be agreed. More detail is in Work Package 2. The Contractor may also be asked to provide ad hoc advice on additional work required by specific local authorities to improve local air quality. In addition, there are likely to be specific work packages which the Authority may require the contractor to complete as part of their responsibilities under the contract and to help support the air quality review and assessment process in the UK. Requirements consist of Core tasks which are embedded in work-packages 1 – 2; and Ad-hoc tasks which are embedded in work packages 3-10 respectively

## 2.3 A brief overview of the requirements of the Technical Support and Reporting Contract for LAQM

### 2.3.1 Core Tasks

WP 1. Technical support to LAs and the authorities -see paragraph 5.1 (provision of a helpdesk; maintenance of the LAQM<sup>2</sup> website and providing data for the AQMA<sup>3</sup> website; maintenance of LAQM tools and authorities' Guidance<sup>4</sup>; Ad hoc advice and support to the authorities and provide and manage a centralised QA/QC programme for nitrogen dioxide diffusion tubes<sup>5</sup> to LAs)

WP 2. Assessment of LAs annual reports and action plans for the DAs and GLA – see paragraph 5.2

### 2.3.2 Occasional Tasks:

WP 3. Significant update of the Emissions Factors Toolkit (EFT) – see paragraph 5.3.

WP 4. Significant update of the UK Technical Guidance<sup>6</sup> - – see paragraph 5.4

WP 5. Updating or commenting on the Policy Guidance<sup>7</sup> – see paragraph 5.5

WP 6. Updating and refreshing the LAQM website – see paragraph 5.6

WP 7. Designing, developing and publishing new calculation tools as required – see paragraph 5.7

WP 8. Additional support to The Authority to meet local limit values – see paragraph 5.8.

WP 9. Incorporating local data within the UK compliance assessment

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<sup>2</sup> The LAQM website can be found at: <http://laqm.defra.gov.uk/>

<sup>3</sup> The AQMA webpages can be found at: <https://uk-air.defra.gov.uk/aqma/>

<sup>4</sup> More information on the LAQM Tools for local authorities is available at - <http://laqm.defra.gov.uk/review-and-assessment/tools/tools.html>

<sup>5</sup> Nitrogen dioxide diffusion tubes are described in more detail at - <http://laqm.defra.gov.uk/diffusion-tubes/diffusion-tubes.html>

<sup>6</sup> Technical Guidance is available at: <https://laqm.defra.gov.uk/technical-guidance/>

<sup>7</sup> The range of Policy Guidance is available at: <https://laqm.defra.gov.uk/supporting-guidance.html>

WP 10. Providing a summary Dashboard for English LAs (not London) – see paragraph 5.9

### **3 Legislation and Policy Context**

#### **3.1 Background**

3.1.1 The UK Government, DAs and GLA (the authorities) are committed to protecting and improving the natural environment and improving air quality is a key focus.

3.1.2 This contract will be let by the Secretary of State for the Environment on behalf of the UK Government, DAs and the GLA. Its purpose is to:

- provide the framework and technical assistance needed by all UK LAs to enable them to properly and consistently assess current and future levels of ambient air quality in their local areas and put in place plans and measures to improve it;
- enable LA reported data to be accessible in a timely way as defined in Paragraph 5.2;
- ensure consistency within each UK administration in accordance with each administration's distinctive legislative and policy requirements;
- Illustrate the extent to which LAs are carrying out their air quality duties and functions effectively and evaluate effectiveness of local measures in tackling air pollution;
- provide the authorities with the information and data needed to understand whether the measures being put in place have a positive and measurable impact on local air quality.

#### **3.2 UK Policy and Legislation**

3.2.1 In the UK, air quality is a devolved issue, which means that the UK Government, DAs and GLA each have responsibilities for reducing the impacts of air pollution on human health and the environment (including but not limited to meeting the national objectives and EU limit values). To aid improvements to air quality, the authorities have set out a framework for LAQM so that LAs also take appropriate action to improve air quality.

3.2.2 Legally binding ambient air quality limit values have been set in line with EU and international obligations; the EU Air Quality Directive (2008/50/EC) and 4<sup>h</sup> Daughter Directive. The Secretary of State is responsible for meeting the EU limit values in England (not London) and (at time of writing) for reporting compliance in the UK to the EU. The respective authorities in Scotland, Wales, Northern Ireland and London are responsible for meeting the EU limit values in their areas; enacted by a series of Air Quality Standards Regulations published in 2010 and 2012.

- 3.2.3 In addition, The Secretary of State has responsibilities under the EU National Emissions Ceilings Directive (NECD)<sup>8</sup>; the European legislation that implements the emissions limits agreed under the amended Gothenburg Protocol. It sets ambitious emissions reduction commitments (ERCs) for five pollutants<sup>9</sup> for 2020 and 2030 to minimize their negative impacts on human health and the environment.
- 3.2.4 The current Air Quality Objectives (AQOs) applicable to LAQM are set out in Air Quality Regulations for England, Scotland, Wales and Northern Ireland (“the Regulations”) published in 2000, 2002 and 2016. The UK Government and DAs published the UK Air Quality Strategy (AQS) 2007. It set out policy options to further improve air quality in the UK to benefit quality of life and help to protect our environment. It also incorporated the AQOs for use by the UK LAs. In November 2015 the Scottish Government published ‘Cleaner Air for Scotland – The Road to a Healthier Future’, Scotland’s first separate air quality strategy. AQOs for England may be revised during the lifetime of the contract.
- 3.2.5 In July 2017, the UK Government and DAs published the national air quality plan<sup>10</sup> which targeted key areas which need to comply with the NO<sub>2</sub> limit value. It built on the programme of Clean Air Zones (CAZs) and set out the UK government’s best available forecast of UK local authorities where one or more roads have concentrations of NO<sub>2</sub> above statutory limits and for how long these exceedances would last if no additional measures were taken. These local authorities have undertaken further assessments using the tools and guidance available under the LAQM regime.
- 3.2.6 Part IV of the Environment Act 1995 (sections 84 and 88) and Part III of the Environment (Northern Ireland) Order 2002 (articles 13 and 16) require LAs to review and assess the current and future quality of air in their areas periodically against the AQOs. The forthcoming Environment Bill is likely to amend sections of the Act referring to LAs in England.
- 3.2.7 LAs play an important role. Under LAQM, LAs have a duty to review and assess air quality; where an AQO is already exceeded or is likely to be exceeded, the LA is required to declare the affected area as an Air Quality Management Area (AQMA) if there is relevant public exposure. The LA must then produce an action plan in pursuit of the achievement of the AQO(s). The actions taken by LAs identify local hot spots and help the authorities comply with the Limit Values.
- 3.2.8 The UK Government, DAs and GLA require LAs to review and assess air quality and produce annual reports and have set timetables by when reports need to be submitted for assessment. The reports differ between the authorities.

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<sup>8</sup> Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC.

<sup>9</sup> The five pollutants with ERCs are: sulphur dioxide, SO<sub>2</sub>; oxides of nitrogen, NO<sub>x</sub>; particulate matter, PM; non-methane volatile organic compounds, NMVOCs; and ammonia, NH<sub>3</sub>

<sup>10</sup> The air quality plan for nitrogen dioxide (NO<sub>2</sub>) in UK (2017) is available at: <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

- 3.2.9 With the exception of London, the UK Government and the DAs published joint Technical Guidance in 2016 LAQM.TG (16). In addition, the UK Government, SG, WG, DAERA and the Mayor of London publish specific Policy and Technical guidance. All of these documents are available on the LAQM website<sup>11</sup>.
- 3.2.10 Another relevant policy area is industrial pollution. Industrial sources are controlled by the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), Natural Resources Wales (NRW) and the Northern Ireland Environment Agency (NIEA) and by LAs under the Pollution Prevention and Control regulations, except in Scotland where all controlled processes are regulated by SEPA. LAs also have controls over smaller industrial and commercial sources, largely through the Clean Air Act and Clean Air Order (for Northern Ireland) with their associated control of stack heights.
- 3.2.11 The authorities take a dynamic approach when managing ambient air quality and the contractor will need to be flexible and respond quickly to any changes that need to take place. One example is the result of the June 2016 EU referendum. It is likely to affect this contract in terms of the framework and governance of the Air Quality Standards and Objectives that are applicable to the UK. During the lifetime of the contract, the authorities will need to decide what ambient air quality standards and objectives to adopt, and whether these will reflect those defined in current regulations or not. Another example to be aware of is the addition of a statutory national indicator for average population exposure to NO<sub>2</sub> in Wales under the Well-being of Future Generations (Wales) Act 2015, and how this must now be considered by LAs alongside the more traditional standards and objectives for air quality.
- 3.2.12 Following publication of the Clean Air Strategy<sup>12</sup> in January 2019 and enactment of a new Environment Act expected within the life of the contract, the LAQM structure in England will be subject to review which is likely to require revision of the LAQM technical guidance as well as the potential for the development of new tools.
- 3.2.13 The authorities may seek to redefine the type and amount of information collected from LAs over the lifetime of the contract to assess the performance of LAs and their progress towards meeting the AQOs.
- 3.2.14 The LAQM framework in England will be reviewed in 2019/20. The contractors will need to quickly respond to these changes.

#### **4 Overview of the core tasks of the Technical Support and Reporting Contract to manage LAQM in the UK**

- 4.1.1 The Authority welcomes bids to the Technical Support and Reporting Contract from individual organisations as well as from consortia.
- 4.1.2 The aims and objectives of the Contract are to:

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<sup>11</sup> The LAQM website located at - <http://laqm.defra.gov.uk/>

<sup>12</sup> The Clean Air Strategy can be viewed at: <https://www.gov.uk/government/publications/clean-air-strategy-2019>

- **Operate a helpdesk** (phone and email) and associated web page, giving impartial advice to LAs regarding all aspects of Review and Assessment under LAQM.
- **Host (where appropriate), maintain and develop all LAQM webpages**<sup>13</sup> as the main way for LAs to access the authorities' Guidance documents, associated tools; FAQs, helpdesk details, checklists for appraisal, report templates, best practice examples of reports and measures for action planning. In addition, the LAQM website hosts two portals; the NO<sub>2</sub> diffusion tube Data Entry System, for use by local authorities, and the Report Submission Website (RSW), which is the conduit through which LA reports are submitted. The authorities and Contractor will have access to the RSW to track progress and for LAs Contact Details.
- **Review and maintain LAQM tools and Guidance** to keep them up to date and relevant for LAs undertaking technical work. A full list of tools available for use by LAs in the Review and Assessment process is available on the LAQM website<sup>14</sup>
- **Provide and manage a centralised QA/QC programme** for nitrogen dioxide diffusion tubes used by LAs.
- **Provide ad hoc expert advice to the authorities** if required, e.g. regarding the updating Technical or Policy Guidance, supporting The Authority to assess new feasibility studies required from named LAs or for related work to help improve air quality.
- **Cascade information to LAs** on behalf of the authorities, e.g. regarding changes to guidance, or changes to calculation tools.
- **Monitor and record potential conflict of interest**, ensuring that any are avoided. Any instances of potential conflict prior to resolution must be reported to the Authority.
- **Provide the Authority with quarterly and annual progress reports.**
- **Provide provision of secretariat services** for all meetings – an annual review meeting and 6 month review meeting will take place annually.
- **Review the LAQM process at least annually** and recommend to the authorities changes to the LAQM framework or provision aimed at lessening the burden of LAs, simplifying the approach, improving information flow, improving tools and reducing the cost of the service.
- **Appraise LA Review and Assessment and Action Planning reports** for Wales, Scotland, Northern Ireland and London over the period of the Contract and to continue the existing LAQM system based on established checklists, report styles, and submission of reports to the authorities as appropriate. The reports include:
  - Annual Status Reports and Annual Progress Reports and summaries aimed at the general public
  - Updating and Screening Assessments

<sup>13</sup> LAQM webpages are available at - <http://laqm.defra.gov.uk/>

<sup>14</sup> list of tools available for use by Local Authorities in the Review and Assessment process is available at: <http://laqm.defra.gov.uk/documents/LAQM-Tools-List-v1.4.pdf>

- Progress Reports;
- Detailed Assessments;
- Draft and Final Action Plans; and
- Action Plan Progress Reports.

## **5 Work Programme**

### **5.1 Work Package 1 - Technical support to LAs and the authorities**

#### **5.1.1 LAQM Website**

5.1.1.1 The Contractor must have the capacity to host the LAQM website<sup>15</sup> on a secure (https) server and have in place sufficient provisions to ensure high level of data security including but not limited to viruses and deliberate attempts to damage the system as well as arrangements for backup in the event of a breakdown. The content of the LAQM website should be reviewed every 6 months, or when changes have been made to the Guidance documents, tools etc., and updated as necessary. All proposed changes need approval from the Authority before being rolled out. In addition, supplementary webpages are hosted on the UK-Air website<sup>16</sup> which tracks the status of all AQMAs in the UK. The AQMA Database is a live feed into UK-AIR with fixed export of database taking place every 3 months as a QA/QC step for UK-Air contractors to then chase GIS datasets where changes become evident. The AQMA Database is continuously updated by the Contractor.

5.1.1.2 The Contractor should note that all material on the pages of the sub-domain will need to be consistent with the principles of Transformational Government<sup>17</sup>, conform with the Authority's clear English guidance and branding rules, and meet the Authority's website standards (including design, e-Government website standards, WAI AA standards, and compliance with the Disability Discrimination Act). The Contractor is required to meet COI Web Standards<sup>18</sup>.

5.1.1.3 The Contractor will be responsible for the content and structure of all the LAQM web pages. Table 1 provides an overview of the current LAQM web pages. All web content (apart from the AQMA pages and the VCM) should be hosted by the Contractor on their web server(s) as a sub-domain of the Authority's website.

5.1.1.4 The Contractor will need to provide the name, phone number and email for either a technical contact or project manager who can coordinate the work with the Authority's IT contractor. This process requires one month's notice so must be embarked upon as soon as the Contract is awarded during the handover period. The Contractor will bear the costs of any transfer fee for the domain.

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<sup>15</sup> <http://laqm.defra.gov.uk/index.html>

<sup>16</sup> <https://uk-air.defra.gov.uk/aqma/>

<sup>17</sup> <https://www.gov.uk/government/publications/government-transformation-strategy-2017-to-2020>

<sup>18</sup> COI web standards are available at:

<http://webarchive.nationalarchives.gov.uk/20100202100434/coi.gov.uk/guidance.php?page=188>

5.1.1.5 The Authority regularly reviews its websites, and is likely to move a portion of the LAQM website content to the Government’s website<sup>19</sup> during the lifetime of The Contract (See Work Package 6). The structure of the LAQM website could also be improved to improve user experience. The Authority will provide The Contractor an update of any plans to change the website at the kick-off meeting.

5.1.1.6 The Authority will add a break clause to accommodate any subsequent changes required to the location of the LAQM website. The Authority will keep the Contractor updated on the progress on the structure, content and location of the LAQM website and will ask The Contractor to submit for approval a costed proposal to change the website prior to the commencement of any work.

**Table 1- Current LAQM Webpage Requirements**

5.1.1.7 **Table 1** reflects the current layout of the LAQM website and AQMA webpages.

<b>Webpage</b>	<b>Requirements</b>
Helpdesks	Provide helpdesk contact details to the Authority at least 2 weeks before the start of the Contract (03 June 2019) for approval by the Authority.
Frequently asked Questions (FAQs)	Keep up to date with information from helpdesk queries. Publish new FAQs as they occur. If FAQs are very extensive they should be drafted as guidance notes and with agreement with the Authority added within the supporting guidance pages as relevant.
Review and Assessment	<p><b>Good Practice</b></p> <p>Keep checklists and examples of good practice up to date. Provide templates for Review and Assessment reports.</p> <p><b>Tools</b></p> <p>Maintain links to tools and in some instances host the tool for LAs to use in Review and Assessment and Action Planning.</p> <p>The Contractor will be responsible for keeping up to date and maintaining the following tools, undertaking technical work as required:</p> <ul style="list-style-type: none"> <li>• Emissions Factor Toolkit</li> <li>• The Precision and Bias Spreadsheet for NO<sub>2</sub> Tubes</li> <li>• NO<sub>2</sub> Diffusion Tube Data from LAs. (England Only)</li> <li>• Database of Bias Adjustment Factors for NO<sub>2</sub> tubes</li> <li>• The Industrial Emissions Screening</li> <li>• Stack Height Calculator</li> </ul>

<sup>19</sup> Government website is available at: <https://www.gov.uk/>

Webpage	Requirements
	<ul style="list-style-type: none"> <li>• NO<sub>2</sub> Fall-Off with Distance from Kerb</li> <li>• NO<sub>2</sub> Adjustment for NO<sub>x</sub> Sector Removal</li> <li>• Biomass Calculator</li> </ul> <p>Note: A full list of tools available for use by LAs in the Review and Assessment process is available on the LAQM website<sup>20</sup> The Contractor must liaise with other organisations to manage any updates as required and then host/upload links to the updated tools.</p> <p><b>AQMA database</b> The Contractor will ensure all data on current AQMAs is passed to the UK Ambient Air Quality Assessments team at Ricardo E&amp;E every 3 months. Ricardo E&amp;E will contact the LAs directly to obtain GIS data. The Contractor is not required to create the GIS AQMA maps.</p>
Supporting Guidance	Keep pages up to date with guidance from other government departments and external sources where they represent best practice and provide useful information for LAs.
Report Submission Website (RSW) (non-public facing registered users only)	Maintain the portal and webpages for preparing and submitting Review and Assessment reports. Suggest improvements or expanded scope to aid automation and time-saving procedures.
Action Planning	Provide checklists, up to date examples of good practice and case studies and information on a wide range of measures to be used to improve air quality at a local level.
Policy Interactions	Provide links between air quality and other relevant policy areas – guidance from other Government Departments etc which will be useful for LAs. Links should also be made with relevant policy areas within each of the Authorities.
Public Health Impacts	Provide links to relevant studies and advice regarding the impact of air pollution to human health; particularly focused on the authorities' respective Public Health Outcomes Frameworks.

5.1.1.8 The following services will be provided by the Contractor, with appropriate content provided on the LAQM website. This will be referenced in the official guidance (as appropriate) and referred to in the advice that is provided by the helpdesk:

### 5.1.2 Helpdesk

5.1.2.1 The Contractor must operate a helpdesk to aid LAs in all aspects of Local Air Quality Management; Review and Assessment and Action Planning via an email address and a dedicated direct telephone/24-hour answer phone line (does not

<sup>20</sup> list of tools available for use by Local Authorities in the Review and Assessment process is available at: <http://laqm.defra.gov.uk/documents/LAQM-Tools-List-v1.4.pdf>

have to be Freephone).The Contractor must also host and maintain the webpages for the LAQM website which relate to the helpdesk and to Local Air Quality Management and the Report Submission Website. In addition, the Contractor must ensure it sends up to date AQMA information to consultants that operate Defra's UK-Air website every 3 months so they can update the AQMA webpages on UK-Air.

#### **5.1.2.2 Helpdesk Process:**

- Requests for help, both by telephone and email, must be screened by the Contractor before being answered. Irrelevant calls such as wrong numbers, or calls not related to LAQM do not need to be logged. Any spam emails which make it through the firewall do not need to be logged. The helpdesk should not be used to provide data which is already available on the webpages; queries on this nature should be directed to the right section.
- In normal office hours (Monday to Friday 9:00 to 17:00), the helpdesk is to be operated at all times by experienced staff capable of dealing with general enquiries on all aspects on Local Air Quality Management. It is expected that the minimum qualifications and experience for the helpline operator role would be at Consultant and Senior Consultant Grade or equivalent. Those enquiries that are straightforward to answer should be dealt with directly. Enquiries of a more technical nature may need to be directed to other appropriate staff on the project team, or will require a follow-up response.
- During office hours all enquiries by voice will either be dealt with within an hour of receipt by the helpline operator, or passed to the member of staff most qualified to deal with more complex issues. E-mail enquiries will be checked for every morning and afternoon as a minimum. Telephone messages and e-mails which arrive outside normal working hours should be responded to the next working day.
- Enquiries on technical issues should, where deemed appropriate, be discussed with or referred to the Authority or with the GLA if they refer to London. Enquiries regarding Policy or Action Planning measures in specific countries should be discussed with the appropriate authority prior to issuing advice.
- An electronic log will be kept of each enquiry, with basic information about the nature of the enquiry and the response provided (including information relating to the time taken to provide the response, if not dealt with at the initial point of contact). A summary of the enquiries will be forwarded to the Authority as part of the quarterly progress report. The existing database used to log these details will be provided to the Contractor so that records can be continued. The current database which will be transferred is approximately 2 Mb in size.
- Advice will be provided by telephone or e-mail. In some cases a limited amount of correspondence may be entered into in order to provide a satisfactory answer.
- It is anticipated that there will be an average of 750 enquires each year (after screening and diversion of calls as appropriate to the National Atmospheric Emissions (NAEI) Helpdesk), taking on average 40 minutes each to log, research, and reply to. It should be noted that this is an estimate of the likely number of enquiries. The Contractor is required to respond to all relevant enquiries as per the process outlined above.
- Advice on the selection and use of dispersion models, the dispersion of emissions and the calculation of stack height for Part B and (A2) processes (Part

C processes in Northern Ireland) may require higher handling times than other enquiries. The advice service will be limited to a maximum of 2 hours work for each enquiry. It is anticipated that there will be an average of 20 enquiries per year on this task. Therefore a total number of 40 helpline hours is expected.

- If the Contractor considers that a particular item will take up more than 2 hours work, the Contractor will provide the Authority’s Nominated Officer with a written estimate within 1 working day by e-mail of the time required. No work should be undertaken by the Contractor on any such enquiry until the Authority makes a decision to fund the additional work. If the Authority decides not to fund the work, the LA making the enquiry will be required to pay for the work if it still wishes it to be undertaken.
- It is not a requirement for the Contractor to answer enquiries regarding the National Atmospheric Emission Inventory. However the Contractor should supply contact details for the National Atmospheric Emission Inventory helpdesk at Ricardo E&E so that queries can be addressed appropriately<sup>21</sup>.
- Where queries are asked more than five (5) times, they are classed as Frequently Asked Questions (FAQs). These should be added to the FAQs online within two (2) weeks of receipt of the fifth question. See Section 5.1.3 for FAQ requirements.

**Overview of LAQM Helpdesk**

5.1.2.3 The five key areas of LAQM queries on the helpdesk are detailed in **Table 2** Table 2 below. The Contractor must ensure the required range of expertise is maintained and that all advice provided remains independent and free from any conflicts of interest in delivering the Services.

**Table 2 - Overview of LAQM Helpdesk**

Helpdesk element	Requirements	Anticipated number of enquires per annum
Review and Assessment (R&A)	Questions on R&A procedure and queries from LAs on compiling their reports according to the requirements set out in statutory guidance LAQM.TG (16), LAQM.PG (16), LAQM.PG(S)(16), LAQM PGNI(09), and LAQM Interim Policy Guidance for Wales(16), and LLAQM.TG(16) and LLAQM.PG(16), and any subsequent or revised guidance that might be issued in the future.	300
Selection and use of air quality models	Modelling 1: Sound impartial advice on technical questions on air quality modelling to assist LAs to meet duties under Part IV of the Environment Act 1995 and Environment (NI) Order 2002.	150

<sup>21</sup> Note: the National Atmospheric Emission Inventory helpdesk is separate from this contract and will continue to be operated by Ricardo E&E. Contractors will only be required to refer queries to this desk where they have reached the wrong helpdesk or where the query is a question about the NAEI.

	<p>To be carried out with reference to Technical Guidance LAQM TG (16) and LLAQM.TG (16).</p> <p>The Contractor is expected to gain knowledge of any new guidance or supplementary assistance, issued by the Authority, the DAs and their Contractors.</p>	
Selection and use of air quality monitoring equipment	<p>Sound impartial advice for technical questions on monitoring to assist LAs to meet duties under Part IV of the Environment Act 1995 and Environment (NI) Order 2002.</p> <p>To be carried out with reference to Technical Guidance LAQM.TG (16) and LLAQM.TG (16).</p> <p>The Contractor will also be expected to gain knowledge of any new guidance or supplementary assistance, issued by the Authority, the DAs and GLA and their contractors.</p>	200
Action Plans	<p>Address questions on compiling or revising Action Plans according to the requirements set out in LAQM.PG (16), Interim Policy Guidance for Wales (16), LAQM.PG(S) (16), LAQM.PGNI(09) and LLAQM.PG(16), and subsequent or revised guidance.</p>	30
Dispersion of industrial emissions and calculation of stack heights for processes which require authorisation under the LA pollution control regimes.	<p>Modelling 2: The Contractor will provide advice on the selection and use of dispersion models, the dispersion of emissions and the calculation of stack height for Part B and (A2) processes (Part C processes in Northern Ireland) that will be consistent with that given in the relevant published guidance. The Contractor will also be expected to keep abreast of developments in dispersion modelling.</p>	20
Total		750

### 5.1.3 Frequently Asked Questions (FAQs)

- 5.1.3.1 FAQs are intended to support the official Guidance, e.g. providing a deeper explanation of an issue based on LA experience, or examples that explain a given approach from the Guidance with a clear conclusion.
- 5.1.3.2 New FAQs should be written when five (5) or more enquiries are received by the helpdesk. These should be added to the FAQs online within two (2) weeks of receipt of the fifth question. The FAQ must be approved by the Authority prior to publishing, and managed on an ad hoc basis. They should be concise and provide clear answers to the questions raised.

Lengthy answers should be written as a guidance note and placed in the Supporting Guidance pages. Approval from the Authority must be sought for all new FAQs and guidance notes before their publication.

5.1.3.3 FAQs should be reviewed regularly and at least every 6 months, and updated or deleted as necessary following approval from the Authority.

5.1.3.4 Opportunity to incorporate FAQs into official Guidance should be sought; e.g. during a review and update of the Guidance or when they are rewritten. Approval from the Authority should be sought before this process is commenced. Once incorporated into Guidance, the original FAQs must be removed.

#### **5.1.4 Review and Assessment (R&A)**

5.1.4.1 The R&A pages comprise a large section of the LAQM website, consisting of:

##### **5.1.4.2 Good Practice**

5.1.4.2.1 The Contractor will maintain the examples of Good Practice<sup>22</sup>, identified via the appraisal process, to help maintain a high standard of AQ Assessment and Action from LAs. Future documents should include, but are not limited to:

- Annual Status Report (ASR) – England (except London)
- Annual Status Report (ASR) – London
- Annual Progress Report (APR) – Scotland and Wales
- Updating and Screening Assessment (USA) – Northern Ireland
- Progress Report (PR) – Northern Ireland
- Detailed Assessment – Northern Ireland
- Air Quality Action Plan (AQAP) – All Authorities

##### **5.1.4.3 Tools**

5.1.4.3.1 The following tools are available to LAs via the LAQM webpages<sup>23</sup>. The Contractor will support the Authority to ensure these tools are kept up to date. The Authority will keep the tools under review:

- The **Precision and Bias spreadsheet**: the bias adjustment factor calculations on which it was based are in the public domain. The spreadsheet was built by Ricardo E&E under contract to the Authority and is owned by the Authority.
- The **NO<sub>2</sub> web-based data entry system** is part of the LAQM database. It was developed by Bureau Veritas under the previous contract for the LAQM services with the Authority and belongs to the Authority.

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<sup>23</sup> A list of LAQM Tools for use by LAs in the R&A process is available at: <http://laqm.defra.gov.uk/documents/LAQM-Tools-List-v1.4.pdf>

- The **Year Adjustment Factors** belong to the Authority. They were produced by Ricardo E&E under the Pollution Climate Mapping (PCM) contract, and maintenance is under the Modelling Ambient Air Quality Assessment (MAAQ) contract.
- The **Background Maps** on the LAQM Tools web pages, belong to the Authority. They were produced by Ricardo E&E under the PCM contract, and maintenance and updates is under the MAAQ contract.
- The **NO<sub>2</sub> to NO<sub>x</sub> calculator** was developed by Ricardo E&E, also under the PCM contract. Updating and maintenance does not form part of this Contract.
- The **Emissions Factor Toolkit**: was originally constructed by Bureau Veritas and the Highways Agency under a previous LAQM Contract and belongs to the Authority. Routine updates, QA/QC and maintenance are required by the Contractor.
- The **Emissions Screening Tools (Biomass and Industrial Emissions)** – Belong to the Authority. The tools will be made available and the Contractor is required to provide updates.
- The **Supplementary Assistance on Stack Heights**: was developed by Bureau Veritas and belongs to the Authority. No updates are required but the tool should continue to be made available.
- **NO<sub>2</sub> fall-off with distance from kerb**: developed by Air Quality Consultants Ltd (AQC) under contract to the Authority, and belongs to the Authority. The contractor must update and maintain this tool as required.
- **The database of Bias Adjustment Factors**: was developed by Air Quality Consultants (AQC) and belongs to the Authority. The contractor is required to update and maintain this tool as required.

5.1.4.3.2 Updates and maintenance are required under this Contract. The Contractor is required to provide support for the Emission Factor Toolkit (EFT)<sup>24</sup>. The Contractor must be fully familiar with the working of the spreadsheet and must keep a log of all changes made, and develop a desk instruction detailing how to update the toolkit. These desk instructions will be available to the Authority on request. This will enable the Contractor to respond to helpdesk queries on the current toolkit and provide any updates required.

5.1.4.3.3 Updates will be required if errors or potential improvements are identified in the existing EFT. The EFT is accompanied by any necessary documentation for the user to follow, and this may need updating from time to time if changes are made. The Contractor should allow five (5) days a year for routine maintenance (within the General ad hoc provision (5.1.16)), and will need to be fully familiar with the EFT methodology and workings. A major update could take between ten (10) days and fifty (50) days and The Authority will ask The Contractor to submit for approval a costed proposal before each major update takes place.

5.1.4.3.4 The Contractor should allow one (1) day over the contract for each of the three tools which may require updating under this contract – e.g. the

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<sup>24</sup> The EFT is available at: <http://laqm1.defra.gov.uk/review/tools/emissions.php>

industrial nomographs and the NO<sub>2</sub> distance from the kerb tool, three days in total over the contract period (within the General ad hoc provision (5.1.16)).

5.1.4.3.5 Other tools such as the background maps, NO<sub>x</sub>/ NO<sub>2</sub> calculator may also be required to be updated during the Contract. The Contractor would only be expected to manage the updates, liaising with the Authority's UK Ambient Air Quality Assessments contractor who would be tasked to provide the updated tool. The Contractor would be required to coordinate the upgrade, participating in any required meetings and may be required to publicise the new tool to the LAs through the LAQM webpages. The Contractor is expected to host the new tool/link to the new tool as required and make the necessary changes to the webpages to accommodate the tools.

#### 5.1.4.4 Volatile Correction Model (VCM)

5.1.4.4.1 Measurements of PM<sub>10</sub> using Tapered Element Oscillating Microbalances (TEOMs) can underestimate concentrations because volatile components are lost due to the high sampling temperatures. The VCM<sup>25</sup> allows users, (principally LAs), to correct their measurements. This model was developed at King's College London (KCL) and the web portal is hosted and maintained there. The fixed costs per financial year are shown in **Table 3** (excluding VAT), KCL do not expect to perform any major changes to their service and costs are assumed to increase by approximately 2% per year. These should be invoiced on a quarterly basis. The Contractor will be required to put in place a direct contract to pay KCL for the provision of this service. KCL will be required to:

- Host and maintain the website and keep Defra and Devolved Administration logos visible.
- Keep up-to-date database available to enable calculations (including hourly data feed from DDU and annual update of ratified data.)
- Log and answer enquiries to [erg-vcm@kcl.ac.uk](mailto:erg-vcm@kcl.ac.uk).
- Undertake a quarterly update of Frequently Asked Questions.
- Keep Help, Contacts and Links up to date.
- Report changes and issues to the Authority, DAs and the GLAs.

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<sup>25</sup> The Volatile Correction Model (VCM) web portal is available at - <http://www.volatile-correction-model.info/Default.aspx>

**Table 3 - VCM indicative costs**

Date of Quarter End	Indicative Cost per Quarter*				
	2019	2020	2021	2022	2023
31 <sup>st</sup> March	n/a	£825	841.50	£858.33	£875.50
30 <sup>th</sup> June	£825	£841.50	£858.33	£875.50	£893.01
30 <sup>th</sup> September	£825	£841.50	£858.33	£875.50	£893.01
31 <sup>st</sup> December	£825	£841.50	£858.33	£875.50	£893.01
<b>Total Cost per Calendar Year</b>	£2,475.00	£3,349.50	£3,416.49	£3,484.83	£3,554.53

\* Indicative costs only include the original contract term. There will be an option to extend the Contract by a further twenty four (24) months.

#### **5.1.5 Centralised QA/QC programme for non-automatic nitrogen dioxide (NO<sub>2</sub>) data**

5.1.5.1 The QA/QC package of work within The Contract provides LAs with a means to maintain confidence in their nitrogen dioxide (NO<sub>2</sub>) diffusion tube results.

5.1.5.2 Diffusion tubes are used by LAs to Review and Assess air quality and in other assessment functions such as planning decisions to give indicative concentrations of ambient NO<sub>2</sub>. The results obtained are often used in making potentially expensive decisions, such as declaring an AQMA or monitoring the effectiveness of measures implemented to improve air quality. It is therefore important that the results obtained are fit for this purpose, and are as robust and reliable as possible. Guidance for laboratories and users is available on the LAQM website<sup>26</sup>, and is summarised in LAQM TG(16).

5.1.5.3 The Contractor will :

- Encourage LAs to continue to use the Guidance and the Diffusion Tube Entry System for England<sup>27</sup> on the LAQM Website to ensure consistent results are recorded.
- Continue to collate information from participating laboratories to calculate the national bias adjustment factors and present these on the LAQM website for LA use. This work will include carrying out an adequate number of co-location studies and collecting results from co-location studies undertaken by LAs.
- Encourage LAs to use the QA/QC service - AIR-PT scheme – which ensures a harmonised methodology for NO<sub>2</sub> diffusion tube use in LAQM. This is detailed below.

<sup>26</sup> Guidance on NO<sub>2</sub> diffusion tubes for laboratories and users is available at:

[http://laqm.defra.gov.uk/documents/0802141004\\_NO2\\_WG\\_PracticalGuidance\\_Issue1a.pdf](http://laqm.defra.gov.uk/documents/0802141004_NO2_WG_PracticalGuidance_Issue1a.pdf)

<sup>27</sup> The Diffusion Tube Data Entry System for England is available at: <http://laqm.defra.gov.uk/dtdes/>

#### **5.1.5.4 LA Diffusion Tube QA/QC Support Service**

5.1.5.5 The Contractor is required to manage the centralised quality assurance/quality control (QA/QC) programme for NO<sub>2</sub> diffusion tubes used by LAs. This consists of two work streams, which are detailed below. The aims of the QA/QC support service, with best endeavours is to ensure that:

- LAs expose diffusion tubes in a synchronised way across the country through publication of an exposure calendar
- Comparison of major commercial providers of diffusion tubes takes place (and are appraised in their performance) through participation in the AIR-PT scheme. Poor performance in the AIR-PT Scheme of a participating lab is investigated and recommendations made in order to give rise to improved performance in future AIR-PT rounds
- Field inter-comparisons are undertaken between diffusion tubes from different suppliers to appraise their comparability and contact is made where poor performance is detected to seek to rectify or improve problems
- Collation of co-located studies, between diffusion tubes and continuous NO<sub>2</sub> analysers, is made for precision (in triplicate tubes) and bias correction
- The national bias adjustment tool is maintained and updated through reasonable participation by LAs

##### **5.1.5.5.1 Work stream 1 - NO<sub>2</sub> diffusion tube QA/QC Framework**

The Contractor is required to undertake the following:

##### 5.1.5.5.2 Promotion and harmonisation:

- promote the independent AIR-PT scheme operated by LGC Standards and supported by the Health and Safety Laboratory, with yearly assessment against agreed performance criteria.
- undertake ongoing promotion of harmonised procedures for diffusion tube preparation. The Contractor must promote the use of the published guidance through the webpages and guidance provided through the helpdesk.

##### 5.1.5.5.3 Operate a field inter-comparison exercise:

- Groups of typically six diffusion tubes from each participating laboratory should be exposed at a site co-located with a chemiluminescent NO<sub>x</sub> analyser. This should be at one roadside site within the Automatic Urban and Rural Network<sup>28</sup> (AURN). This exercise will provide information on the performance of diffusion tubes during the exposure phase. With this type of study the Contractor will acquire data on bias and precision, and yield information on many of the factors affecting diffusion tube performance. The data must be made available for use in and to improve QA/QC procedures.

##### 5.1.5.5.4 Coordination of results:

- examine the results of the AIR-PT scheme together with those from the Field Inter-comparison Exercise, exploiting the synergy between these two schemes in diagnosing laboratory problems.

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<sup>28</sup> <https://uk-air.defra.gov.uk/networks/network-info?view=automatic>

- communicate any problems identified, to the laboratory concerned, to help them improve performance.
  - disseminate the findings to LAs in a way that will help make informed decisions on selecting diffusion tube suppliers. The Contractor should provide a list on the LAQM webpages of the names of laboratories who have demonstrated satisfactory performance criteria over the past year (based on the Rolling Performance Indicator calculated by LGC Standards). This list is updated quarterly. The Contractor should continue to publish a two (2) page summary of AIR-PT results on an annual basis<sup>29</sup>.
- 5.1.5.5.5 publish and maintain an Exposure Calendar<sup>30</sup> to coordinate four to five weekly exposure periods for LA NO<sub>2</sub> diffusion tubes and promote it to LAs.
- 5.1.5.5.6 Work stream 2 - NO<sub>2</sub> diffusion tube Data Gathering Analysis and Sharing.**
- 5.1.5.5.7 The Contractor is required to:
- 5.1.5.5.8 Maintain and host the existing precision and bias spreadsheet<sup>31</sup> on the webpages for LAs who choose to undertake their own co-location studies. Updates may be required by the Authority on an annual basis.
- 5.1.5.5.9 Maintain the national bias adjustment factor spreadsheet tool<sup>32</sup> by contacting all the LAs in the UK at least once a year (more often for the co-location studies) to obtain data and metadata including:
- Location of their diffusion tubes – OS grid Reference x, y, and site type – background, roadside etc.
  - The specific tube preparation method, supplier and analysis laboratories for all tubes.
  - Results from co-location studies including automatic NO<sub>2</sub> where available as an annual average. The contractor may need to obtain additional information on the QA/QC processes applied to the automatic data and ensure these are in line with the AURN procedures, or flag the data appropriately if the QA/QC procedures are unknown or of poor quality.
  - Undertake simple quality control checks on all data received. The Contractor should collect data from co-location studies at least three times a year, at the end of February, May and September.
  - Maintain the national diffusion tube bias adjustment database. This database collates the results of co-location studies carried out by LAs throughout the UK. This database will be transferred to the Contractor. The results from the co-location studies should be combined using orthogonal regression (forced through zero) in order to calculate an adjustment factor for each laboratory / preparation method / year combination. The Contractor will be required to publish on the web, the

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<sup>29</sup> The summary AIR-PT results are available at: <http://laqm.defra.gov.uk/diffusion-tubes/qa-qc-framework.html>

<sup>30</sup> The Exposure Calendar is available at: <http://laqm.defra.gov.uk/diffusion-tubes/diffusion-tubes.html>

<sup>31</sup> The precision and bias spreadsheet is available at: <http://laqm.defra.gov.uk/bias-adjustment-factors/national-bias.html>

<sup>32</sup> The national bias adjustment factor spreadsheet is available at: <http://laqm.defra.gov.uk/bias-adjustment-factors/local-bias.html>

co-location data from the field inter-comparison exercise for those laboratories who agree to their data being included. The results are published in a spreadsheet which is updated at least three times a year in March, June and October. Occasionally additional releases of the spreadsheet may be required, depending on data received.

### **5.1.6 Report Templates**

5.1.6.1 A series of reporting templates<sup>33</sup> have been developed for each of the countries in the UK. They all take a similar approach. But have differences that are specific to each country's needs.

5.1.6.2 It is expected that the templates will change throughout the lifetime of the contracts as the LAQM system evolves across the UK. The authorities may consult with The Contractor from time to time to discuss and agree changes to the templates. The Contractor must keep the templates up to date and ensure that they are available on the LAQM website in a timely fashion; particularly if an administration has made changes:

- Annual Status Report (ASR) – England (except London)
- Annual Progress Report (APR) – Scotland and Wales
- Annual Status Report (ASR) – London
- Progress Report (PR) and Updating and Screening Assessment (USA) – Northern Ireland
- Air Quality Action Plan (AQAP) – all authorities except London
- Annual Status Report (ASR) – London
- Annual Status Summary Report (ASSR) – London
- Annual Status Summary Report (ASSR) for London Map Data Spreadsheet
- Air Quality Action Plan (AQAP) – London
- Supplementary Planning Guidance (SPG) – London
- All Review and Assessment report templates for previous years

### **5.1.7 Appraisal Checklists**

5.1.7.1 The authorities have developed a series of checklists<sup>34</sup> to help appraise some of the documents returned by LAs to the authorities. They are devised from LAQM TG (16) and the authorities may consult with the Contractor from time to time to discuss and agree future changes. The Contractor must keep these up to date and made available on the LAQM website in a timely fashion.

### **5.1.8 Declaration and Revocation of AQMAs**

5.1.8.1 The LAQM website contains specific guidance for LAs to help them manage the declaration and revocation of AQMAs<sup>35</sup> in a systematic and consistent way across the UK. The guidance includes how to define the boundary of an AQMA.

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<sup>33</sup> The Templates are available at: <http://laqm.defra.gov.uk/review-and-assessment/report-templates.html>

<sup>34</sup> The current checklists are available at: <http://laqm.defra.gov.uk/review-and-assessment/checklists.html>

<sup>35</sup> The Declaration and Revocation of AQMAs webpages are available at: <http://laqm.defra.gov.uk/review-and-assessment/declare-or-revoke-aqmas/declare-revoke-aqma.html>

5.1.8.2 The Contractor will need to keep the webpages up to date and keep them updated in line with the associated FAQs or guidance notes.

### **5.1.9 LAQM consultation**

5.1.9.1 LAs are expected to work closely with a range of stakeholders in the development and execution of their AQAPs and other LAQM duties<sup>36</sup>. These stakeholders include other LAs, agencies, health trusts, businesses and the local community. The Contractor will need to keep the relevant webpages up to date.

### **5.1.10 Report Submission Website (RSW)**

5.1.10.1 The RSW is linked from the LAQM website<sup>37</sup>. It is regularly updated, involving consultation with the Authority as the LAQM system evolves. This website helps LAs prepare and submit their annual statutory LAQM reports and Action Plans. Its main features are:

- A database of contact details, which the LA users can easily update themselves, ensuring that the Appraisal Team and the authorities have access to up-to-date e-mail addresses etc.
- An optional preliminary questionnaire, designed to help LAs identify the main pollution sources, exposure locations and issues to be addressed in the report.
- Report templates, to provide a consistent framework for the report to help LAs as well as the Appraisal Team. Use of the report template is mandatory.
- A report uploading and submitting tool, enabling all prepared reports to be submitted electronically.
- Facility for the authorities, The Contractor and LAs to track the progress of the appraisal process.
- Facility for the authorities to contact LAs, either singly or on mass, with information, updates, requests or any other communication relating to the LAQM process.

5.1.10.2 It is important that the LAQM system is completed consistently across the UK with reference to the Guidance, as this ensures all LAs are working towards reducing concentrations towards the AQOs. The Contractor will work with the authorities to develop a tiered approach to communicating with LAs who are late submitting reports with the aim of getting all reports submitted each year.

### **5.1.11 Action Planning**

5.1.11.1 The Action Planning webpages<sup>38</sup> provide guidance to all LAs to help the development of AQAPs in a consistent way across each UK administration by providing examples of good practice<sup>39</sup> and other relevant information produced by third parties, e.g. on low emission

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<sup>36</sup> The LAQM consultation webpages are available at: <http://laqm.defra.gov.uk/review-and-assessment/laqm-consultation/consultation.html>.

<sup>37</sup> The RSW webpages are available at: <http://laqm.defra.gov.uk/review-and-assessment/report-submission.html>

<sup>38</sup> The Action Planning webpages are available at: <http://laqm.defra.gov.uk/action-planning/action-planning.html>

<sup>39</sup> Current examples of good practice are available at: <http://laqm.defra.gov.uk/review-and-assessment/good-practice/examples.html>

strategies, and air quality and climate change. The Contractor is expected to identify examples of good practice taken from their appraisal of Action Plans and to make these available via the webpages.

#### **5.1.12 Policy Interactions**

- 5.1.12.1 LAQM is influenced by and can, in turn, influence a number of different policy agendas. The LAQM website contains information on the interaction with these and other areas<sup>40</sup> – such as development control, climate change, health, industry and local and regional strategies. The Contractor will maintain these pages and keep them up to date.

#### **5.1.13 Supporting Guidance**

- 5.1.13.1 These webpages contain the official Guidance written by the UK authorities<sup>41</sup>; published for the use by the LAs within their jurisdictions. The Contractor will maintain these pages and keep them up to date.

#### **5.1.14 Public Health Impacts**

- 5.1.14.1 Poor air quality has a significant public health impact and the estimated mortality related to it means AQ is a subject of significant public concern. The research in this area is still developing and the webpages<sup>42</sup> are important to inform LAs on the current scientific understanding. AQ is also reflected in indicators in the Public Health Outcomes Frameworks of England and Wales to enable Directors of Public Health to prioritise action on AQ in their areas. The Contractor will maintain these pages and keep them up to date.

#### **5.1.15 Additional Services**

- 5.1.15.1 Although the Authority has no current plans for any additional services under this contract, the evolution of LAQM over the lifetime of the contract may require additional services to be included and will be awarded at the discretion of the Authority in accordance with Additional Condition A.21 (Change Control Note).

#### **5.1.16 Ad hoc advice to the authorities**

##### **5.1.16.1 General advice related to LAQM**

- 5.1.16.2 In addition to regular quarterly reports, the Contractor will be asked by the authorities from time to time to provide information from the database/records on LAs' progress and will have to produce summary statistics at short notice (less than 48 hours) for reporting purposes to senior officials or Ministers within the authorities. Such ad-hoc requests are likely to range from simple requests for information requiring interrogation of the Review and Appraisal database, to possible small-scale 'projects', requiring the Contractor to carry out more in-depth analysis. For such projects, the Authority may require the Contractor to produce a short summary report of the findings. An allowance of 35 days per year for ad-hoc requests has been factored into the Contract. The

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<sup>40</sup> The Policy Interactions webpages are available at: <http://laqm.defra.gov.uk/policy-interactions/policy-interactions.html>

<sup>41</sup> The Supporting Guidance webpages are available at: <http://laqm.defra.gov.uk/supporting-guidance.html>

<sup>42</sup> The Public Health Impacts webpages are available at: <http://laqm.defra.gov.uk/public-health/public-health-impacts.html>

Contractor must keep a record of whether the request came from Defra, SG, WG, DAERA or the GLA and provide an update on this information on a quarterly basis.

- 5.1.16.3 In Wales part of this responsibility may require the provision of brief written updates on changes to guidance, tools, best practice or addressing specific issues to the Welsh Air Quality Forum (WAQF). Such written documents should be in the form of either 1-2 briefing notes or perhaps specific section/ chapters of the WAQF annual report. The Contractor may also, from time-to-time, be required to provide a presentation at one of the WAQF's meetings or annual seminar. Any requirements to provide such information will be communicated via the WG nominated officer for this Contract.

**5.1.17 Ad Hoc Technical Guidance Updates**

- 5.1.17.1 During the Contract, the Authority may request that sections of the Technical Guidance (LAQM.TG (16)) are updated or FAQs added to webpages as technical issues arise. The Contractor should allow 10 ad hoc days per year for this activity. In the case of major changes to the guidance, this is likely to include attending meetings, probably in London, to discuss the changes. Any additional Technical Guidance or FAQs required will be undertaken within this allocated time.
- 5.1.17.2 The Contractor should keep a record of possible updates needed to the LAQM.TG (16), LLAQM (16) and associated Policy Guidance and practice guidance documents and advise the authorities when a likely review of the documents should take place. The Contractor is required to have sufficient expertise and knowledge of the guidance documents to be able to draft an update. The Contractor should provide a likely cost for this task to the Authority.
- 5.1.17.3 The Authority has discretion for how the ad hoc days are to be used. If the Authority chooses not to use these days a final contract price will be reconciled at the end of the contract.

**Table 4 - Ad Hoc Summary of Work Package 1**

Ad Hoc Element	Days
General Ad-Hoc	35 days/year
Technical Guidance	10 days/year

## 5.2 **Work Package 2 - Assessment of LAs annual reports and action plans for the DAs and GLA**

- 5.2.1 Appraise for Wales, Scotland, Northern Ireland and the GLA (but not England outside of London) all LA Review and Assessment and Action Planning reports over the period of the Contract and to continue the existing LAQM system based on established checklists, report styles, and submission of reports to the authorities as appropriate. The reports are outlined in section 5.2.15.
- 5.2.2 Appraise up to 20% of English (outside London) annual Review and Assessment and Action Planning reports. The Authority will agree an approach with the Contractor to select which English (outside London) reports to appraise and which draft and final action plans to appraise.
- 5.2.3 Detail any potential conflict of interest before appraising reports and report summary, and solution, to the Authority.
- 5.2.4 The appraisal process consists of the following steps for all authorities in the UK except those in London:
- For each report, the Contractor will appraise it using the correct checklist as a prompt, if existing, within 5 weeks of receipt. The outcome is logged and the checklist and Appraisal Report is sent to the appropriate authority on outcome via the RSW.
  - The appraisal is a professional evaluation of the quality of the evidence provided by each LA and the Contractor provides a judgement on the robustness and “fitness for purpose” of these assessments and whether further action is needed to declare or revoke an AQMA, or whether more detailed work is needed by the LA.
  - At the outset of the contract and at regular intervals thereafter, the Contractor should agree with the authorities the issues which should be considered in their appraisals. The Contractor must be fully familiar with the use of the authorities’ checklists to assist with appraisals.
- 5.2.5 Where the LA report was unsatisfactory, the LA must complete an Appraisal response addressing comments in the Appraisal Report and send it to the appropriate authority via the RSW. This response should be picked up and reviewed by the Contractor within 3 weeks, and the Appraisal Response checklist sent to the relevant authority, for review and onward transmission to the LA via a letter. This process will be repeated until all concerns have been addressed.
- 5.2.6 Report appraisal**
- 5.2.7 LAQM requirements originate from the Act and the Order. There are two key elements – Review and Assessment and Action Planning. More detail on how these relate to the Contract is provided below.
- 5.2.8 The Review and Assessment Process**
- 5.2.9 The Act and the Order provide the basis for local air quality management. LAs are required to Review and Assess air quality to identify areas of poor air quality; a process known as Review and Assessment.

- 5.2.10 Air quality management areas (AQMAs) are required to be designated where air quality is found to be poor and the LA must then draw up an Action Plan setting out the measures it intends to take in pursuit of the air quality objectives in the area; a process known as Action Planning.
- 5.2.11 Review and Assessment is determined separately for each of the UK countries, and for London. There are **22** Local Authorities in Wales; **11** in Northern Ireland; **32** local authorities in Scotland; and there are **33** London boroughs. The contractor is required to assess each Annual Report and Air Quality Action Plan for Wales, Northern Ireland and Scotland. For London, the contractor is required only to assess the ASRs. The GLA appraise the London borough APs themselves. For England, The contractor is required to assess up to 20% of the **353** local authorities' ASRs and AQAPs.
- 5.2.12 Some LAs will send in combined reports; however the number of combined reports may change from year to year.
- 5.2.13 It is not possible to estimate how many Detailed Assessments or Further Assessments will be submitted each year. The Contractor was asked in its bid to provide a time (in hours) for appraising each type of report, which the Authority uses as a multiplier.

**Table 5 - Review and Assessment Process**

Step	Document definitions	Details.
<b>England (outside London)</b>		
Annual report; AQAPs	Annual Status Report (ASR)  Air Quality Action Plans (AQAPs)	<p>LAs submit a single report each year which also includes a public-facing summary. The reports include a section to identify new non-compliant areas and to report progress within existing AQMAs.</p> <p>The reports templates are flexible and any detailed further work can be attached as an appendix. English LAs have a new option to fast-track the declaration of AQMAs and are also given the option to adopt Clean Air Zones (CAZs) to encourage the lowest emitting vehicles into a geographically defined area.</p> <p>Air Quality Action Plans are produced where an AQMA has been declared.</p> <p>The contractor is required to assess a small proportion of these. This is likely to be a random sample and selected LAs identified by the competent authority totalling not more than 20%.</p>

<b>London, Scotland and Wales</b>		
Annual report	Annual Status Report (ASR - London), Annual Progress Report (APR) - Scotland and Wales and Annual Status Summary Report (ASSR - London)	<p>LAs submit a single report each year which also includes a public-facing summary. The reports include a section to identify new non-compliant areas and to report progress within existing AQMAs.</p> <p>The reports templates are flexible and any detailed further work can be attached as an appendix. English LAs have a new option to fast-track a declaration of AQMAs and are also given the option to adopt Clean Air Zones (CAZs) to encourage the lowest emitting vehicles into a geographically defined area.</p> <p>Air Quality Action Plans are produced where an AQMA has been declared. The contractor will not assess AQAPs for the GLA as the GLA assess these.</p> <p>All annual reports and AQAPS (except London) to be assessed.</p>
<b>Northern Ireland</b>		
Step 1	Updating and Screening Assessments (USA)	The first step of the Review and Assessment process is an Updating and Screening Assessment (USA). This is based on a checklist <sup>43</sup> to identify those matters that have changed since the previous round was completed, and which may now require more detailed assessment.
Step 2	Detailed Assessments (DA)	<p>Where the USA has identified a risk that an air quality objective will be exceeded at a location with relevant public exposure, the LA will be required to undertake a Detailed Assessment following the Guidance. The aim of the Detailed Assessment should be to identify with reasonable certainty whether or not a likely exceedance will occur.</p> <p>Where a likely exceedance is identified, then the assessment should be sufficiently detailed to determine both its magnitude and geographical extent.</p>

## **5.2.14 LAQM Report Appraisal**

- 5.2.14.1 This Contract also covers appraisal of London LA reports where the Contractor will be answerable to the GLA and will be required to invoice the GLA for some work packages.
- 5.2.14.2 The Contractor is to appraise all LA Review and Assessment and Action Planning reports for Wales, Scotland and Northern Ireland and not more than 20% of LA Review and Assessment and Action Planning reports for England (outside London) over the period of the Contract and to continue the existing LAQM system based on established checklists, report styles, and submission of reports to the authorities as appropriate.

The reports to be appraised include:

- Annual Status Reports and Annual Progress Reports and summaries aimed at the general public
- Updating and Screening Assessments;
- Progress Reports;
- Detailed Assessments;
- Draft and Final Action Plans; and
- Action Plan Progress Reports.

5.2.14.3 The Contractor is expected to:

- Collate examples of good practice taken from their appraisal of local authority reports; e.g. where the Guidance has been properly applied and the local situation is clearly explained and presented.
- Assist the authorities to discuss and agree changes to the reports templates as they are expected to change throughout the lifetime of the contract as the LAQM system evolves across the UK.
- Operate and use the electronic database and archive to record the date when each LA has submitted their reports, the reports' status and any pertinent information from them, from consultation and other relevant information.
- Detail any potential conflict of interest before appraising reports and report summary, and solution, to the Authority.
- Provision of data to the Authority's MAAQ Contractor for Site Suitability Assessment.
- Proactively suggest changes and improvements to the reporting process and electronic database to the authorities.

5.2.14.4 In some circumstances the Action Plans may be contained within Local Transport Plans (LTPs England only) and Local Implementation Plans (LIPs - London only). If Air Quality Action Plans to be assessed are contained within them then the Contractor will be required to search for the relevant information within the documents and appraise all air quality related content. This will not mean the whole document requires appraisal. Similarly if LTP Progress Reports are combined with Action Plan Progress Reports the Contractor will be required to find and appraise the relevant information from within this template.

## **5.2.15 Detailed Responsibilities**

5.2.15.1 Review and Assessment Report Appraisal – UK General Process

5.2.15.2 The appraisal process consists of the following steps (except in London):

- 1) LAs submit all Review and Assessment Reports to the appropriate authority via the Report Submission Website (RSW).
- 2) The Contractor will access the RSW at least weekly and download all reports.
- 3) For each report to be appraised, the Contractor will appraise it using the correct checklist as a prompt, if existing, within 5 weeks of receipt; log the outcome in the database and send a checklist and Appraisal Report to the appropriate authority on outcome.
- 4) The appropriate authority will review the response and send it to LA within 2 weeks of receipt. However, during the lifetime of the contract, the Authority may wish to review its quality control procedure for the appraisal reports sent to English LAs outside of London.

5.2.15.3 Where the LA report was unsatisfactory:

- 1) The LA must complete and submit an Appraisal Response addressing the comments in the Appraisal Report.
- 2) The Contractor must review the LA's Response within 3 weeks of receipt and send the Appraisal Response Checklist to the relevant authority.
- 3) The relevant authority will review the Appraisal Response and return a letter detailing the comments to the LA.
- 4) Steps 1 to 4 will be repeated until all concerns have been addressed. All correspondence must be recorded by the Contractor.

5.2.15.4 Review and Assessment Report Appraisal - London LAs Process

5.2.15.5 The process for appraisals of London LA Reports is different from that for the rest of the UK. Currently the GLA holds a separate contract for the appraisal of R&A documents. The content of that contract has been merged into this specification. The Contractor is required to appraise the London LA Review and Assessment and Action Plan documents under this Contract. The Contractor will respond to the GLA on any specific points relating to reports for London LAs.

- 1) LAs submit all Review and Assessment Reports to the Authority via the Report Submission Website (RSW).
- 2) The Contractor will access the RSW at least weekly and download all reports from London LAs.
- 3) For each report the Contractor will appraise them within 5 weeks of receipt; log the outcome in the London-specific database and send an Appraisal Report to the GLA on outcome. The report must contain a draft response for the GLA to send out in letter form, the format of which must be agreed with the GLA.
- 4) The GLA will review the response and return documents and response to LA within 4 weeks.

- 5) Where the LA report was unsatisfactory the cycle as per steps 1 to 4 of Section 5.2.16.3 above will be repeated until all concerns have been addressed.

#### **5.2.16 Process for All Review and Assessment Appraisals**

- 5.2.16.1 When the Contractor downloads reports from RSW, it will log them, allocating each a unique identification number (for example for Round 7 USAs, USA7-001, for Detailed Assessments, DA7-001... etc.). The Contractor will then disseminate the reports to the individuals who will carry out the appraisals within their Project Team.
- 5.2.16.2 The Contractor will appraise the adequacy of the Review and Assessment methodology used by the LAs (as set out in LAQM.PG (16), LAQM PRG (16), LAQM.PG(S)(16), LAQM.PGNI(09), LAQM.TG(16), LLAQM.TG(16), LLAQM.PG(16)), as well as any revised LAQM policy guidance that might be issued by Defra, the DAs or GLA in the future. The appraisal is a professional evaluation of the quality of the evidence provided by the LA and a judgement on the robustness and “fitness for purpose” of the assessment and whether further action is needed to declare or revoke an AQMA, or whether more detailed work is needed by the LA.
- 5.2.16.3 Discussions should be held with the authorities at the outset of the contract and at regular intervals thereafter to determine precisely which issues should be considered in the appraisals. The Project Team must be fully familiar with the use of the authorities’ checklists to assist with appraisals. The appraisers must be fully familiar with all of the LAQM Policy Guidance and the Technical Guidance documents.
- 5.2.16.4 The checklists must be hosted on the LAQM webpages of the LAQM website so LAs are aware of the appraisal requirements. It is a requirement of the Contractor to review the checklists at least annually, ensure that the LAQM webpages hold up to date copies at all times. The Contractor should recommend improvements and changes to the appropriate authority as required.
- 5.2.16.5 Wherever further information is provided in the course of the initial appraisal, or provided by a LA in response to outstanding issues raised in an Appraisal Report, the Contractor shall log this information in the database and allocate a unique identification number. The Contractor may be required to appraise a LA report more than once depending on whether the LA submits a Draft and then a Final report. However, the Contractor must obtain clear authorisation from the relevant authority before appraising BOTH Draft and Final LA reports.
- 5.2.16.6 In respect of Review and Assessment reports for which the procedure or conclusions give any cause for concern and/or are not accepted, the LA will be asked to justify its decision(s) in writing by the relevant authority.
- 5.2.16.7 The Contractor shall ensure consistency in the appraisal process by:
- Using appropriately qualified and experienced staff to carry out the appraisals;
  - Using all available checklists to prompt the appraiser to consider all relevant matters;

- QA/QC checking of reports by other Team Members. At a minimum one in twenty appraisals will be checked for QA/QC purposes;
- Frequent discussions between Project Team members on issues arising; and
- Ensuring as far as practical that the original appraiser deals with the whole sequence of reports and follow up correspondence associated with one LA.

5.2.16.8 The Contractor will ensure the Project Team provides impartial appraisals of LA reports, including not being involved in the preparation of reports at any stage. Any conflict of interest, and the solution to overcome it, will be reported to the Authority.

5.2.16.9 The Authority requests the Contractor to provide a cost for reviewing each report type in terms of time taken and associated cost and make clear the unit cost for each.

### **5.2.17 Additional Information on the Review and Assessment Appraisals**

5.2.17.1 Some LAs may submit more than one report, i.e. a draft and then the final version. In this unlikely occurrence, the Contractor must contact the relevant authority and obtain a clear instruction to appraise either the draft report, the final report, or both reports. This occurrence is less likely for England, Scotland and London, where LAs in these areas will submit the same report type each year which will incorporate the changes required from the previous years' appraisal.

5.2.17.2 LAs in Wales or Northern Ireland may submit a combined Progress Report and Action Plan Progress Report.

5.2.17.3 Some LAs may work together so closely with neighbouring authorities that they choose to submit combined reports. It is anticipated that these will form a single report for appraisal, but will need to be recorded and reviewed for each of the joint LAs.

### **5.2.18 Air Quality Action Plan (AP) Appraisal**

5.2.18.1 The Contractor will have the task of assessing a small sample of English (excluding London) and **all** DA's LAs' draft APs. The authorities may also ask the Contractor to assess Final APs and any subsequent revisions of the existing APs already submitted to them. The Contractor must obtain clear authorisation from the relevant authority before appraising Final and Revised APs.

5.2.18.2 For London LAs, an additional assessment of the extent to which the Action Plan supports the implementation of the Mayor's Air Quality Strategy (MAQS) will be required to be made. Additional comments will be made by the GLA. London LAs have been advised to update APs following the publication of the MAQS.

5.2.18.3 The AP should overall show evidence that the LAs:

- Have identified and quantified the source contributions to the predicted exceedances of AQO values and that data is correspondingly used within the formulation of AP measures;
- Have carefully assessed all the options available to them to improve air quality in their AQMA(s) (and, in the case of Wales,

factored into this assessment the likely effects, if any, of those options on average exposure to air pollution across the population of the LA as a whole);

- Have sifted through the options and identified those which have been rejected on costs-effectiveness/benefit grounds, including non-air quality benefits such as reducing traffic noise, improving road safety and facilitating healthier lifestyles;
- Have identified and classified effects under key policy headings (i.e. land-use planning, transport, etc.);
- Have taken into account all the relevant Government policies for the area (such as major transport schemes);
- Have involved all relevant LA professionals and departments to ensure a properly balanced and integrated approach;
- Have involved other Government agencies, where appropriate, including in particular Highways England and Environment Agency (English LAs) or SEPA and Transport Scotland (Scottish LAs), the Welsh Government, NRW and Public Health Wales (Welsh LAs) and the relevant LAs in Northern Ireland;
- Have struck the right balance between the use of regulatory powers and other non-regulatory measures;
- Have ensured that the relative contributions of industry, transport and individuals are cost-effective/beneficial and that the package of measures proposed targets the different sources of the problem in a fair and balanced way;
- Have appraised, and where possible, quantified the wider environmental, economic and social consequences of each option, including any potential effects on the future development of the area;
- Have proposed a timetable setting out when each measure is due to be implemented, and;
- In the case of Wales, that LAs have carried out all of the above in accordance with the sustainable development principle as set out in the Well-being of Future Generations (Wales) Act 2015.

5.2.18.4 The current checklists for appraising draft APs must be used<sup>44</sup>.

5.2.18.5 When the Contractor downloads a draft AP from RSW, it will log it, allocating it a unique identification number. The Contractor will produce a draft summary appraisal of the report (approximately 3-4 pages, dependant on the quality and comprehensiveness of the plan), and a covering note, the formats of which is for the Contractor to decide, in consultation with each authority.

5.2.18.6 Within 15 working days of receipt of the draft AP, the Contractor will upload the appraisal report and covering note (which sets out any issues/concerns which should be brought to the attention of the authority) onto the RSW. If necessary, the appropriate authority will make comments on the appraisal report and covering note within 5 working days. The Contractor will then revise the appraisal report and covering note and resubmit it to the RSW for the appropriate authority to approve. Once approved, the report and covering note are automatically sent to the LA. The time spent in appraising such reports should be subject to

regular review by the Contractor and will also be monitored by the Authority.

- 5.2.18.7 In the case of London LAs, the GLA appraise the London borough APs themselves.
- 5.2.18.8 The relevant authorities may wish to appraise Final or Revised APs, and may ask the contractor to provide this service.
- 5.2.18.9 The Contractor will ensure the Project Team provides impartial appraisal of any draft LA APs, the preparation of which they have not been involved with at any stage.

#### **5.2.19 Action Plan Progress Reports Appraisal**

- 5.2.19.1 Action Plan Progress Reports are only expected from Northern Ireland. The Contractor will assess the reports by checking whether the LA is implementing its actions according to its original timetable and comment upon whether the LA is working towards meeting the air quality objectives. The Contractor should produce a short report (approx. 1-2 pages) within two weeks of receipt, to be submitted to the relevant authority, bringing any concerns to their attention.
- 5.2.19.2 Scottish, Wales and London LAs that have not declared any AQMA are expected to use the section discussing the progress, and impact of Action Plan measures to provide an update on any other measure or policy that is part of other documents, such as Local Transport Plans (LTPs), Air Quality Strategy or Climate Change Strategy. These sections would need to be appraised.
- 5.2.19.3 In Wales and Northern Ireland, the statutory guidance on Progress Reports (PRs) recommends that, if a LA has an AP in place, they should consider combining the Action Plan Progress Report with the Air Quality Progress Report. These reports may be submitted in combination. In England, London and Scotland, the statutory guidance recommends combining the Action Plan Progress Report into the Annual Status Report or annual Progress Report respectively.
- 5.2.19.4 It is not possible to estimate the number of Action Plans (Draft, Final or revised) and Action Plan Progress Reports which will be submitted for appraisal each year. As a guide, an average of 20 Action Plan-related reports has been received annually in recent years.

#### **5.2.19.5 Appraisal Checklists**

- 5.2.19.5.1 The authorities have developed a series of checklists<sup>45</sup> to help appraise some of the documents returned by LAs to the authorities. They are devised from LAQM TG (16) and the authorities may consult with the Contractor from time to time to discuss and agree future changes. The Contractor must keep these up to date in a timely fashion to be made available on the LAQM website.

#### **5.2.20 Information Management – Databases and Archives**

- 5.2.20.1 The Contractor will be required to maintain databases of the information extracted from the appraisal of all reports to help evaluate the local

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<sup>45</sup> The current checklists are available at: <http://laqm.defra.gov.uk/review-and-assessment/checklists.html>

measures being undertaken to improve AQ. In addition, up to date records are needed on the progress of all LAs, the number of AQMAs in the UK together with the date and extent of each AQMA as well as the pollutants and objectives they were declared for.

5.2.20.2 The Contractor will also be required to:

- Maintain the archive of the English, Welsh, Scottish and Northern Irish LAs' Review and Assessment documents and Action Planning documents as soon as the Contract commences.
- Obtain electronic copies of all documents submitted during the Contract, directly from the relevant LA if necessary.
- Return to the relevant authority all documents upon termination of the Contract.
- Expand the database as necessary when requested by the relevant authority at any point during the Contract period.
- Provide information to the authorities from the database/records on LAs' progress on a regular basis. Produce summary statistics at short notice (48 hours) to the authorities for reporting purposes to senior officials or Ministers. As such, the Contractor should operate and develop the database in such a way that allows swift interrogation and easy extraction of the relevant information.
- Evaluate the current database upon commencement of the Contract and provide for improvements to be made to the capacities of the current database as is deemed necessary.
- Make the database available for access externally by the authorities, for example via the use of a secure website.

5.2.20.3 Existing databases which are relevant to the Contract will be transferred to the Contractor.

5.2.20.4 The AQMA database must be kept up to date so that the Contractor can pass information to Defra's MAAQ contractor to enable them to request GIS files from LAs. The Contractor will obtain the relevant information from the LAs; electronic maps and AQMA descriptions, for example, and pass these to the Contractor for display on the LAQM webpages.

5.2.20.5 A summary of the information which should be held within the databases is provided in **Table 6**.

**Table 6 - Information Management, Database Content**

Information to be Recorded	Detail required on:
<ul style="list-style-type: none"> <li>• Progress of LAs in England, London, Wales, Scotland and Northern Ireland in submitting their Review and Assessment documents.</li> <li>• Details of all the reports submitted to the authorities.</li> </ul>	<ul style="list-style-type: none"> <li>• The number of LAs who have submitted their reports and date submitted.</li> <li>• Each report should have a unique reference number.</li> <li>• The stage each LA has reached if appropriate.</li> <li>• The results of each study.</li> </ul>

Information to be Recorded	Detail required on:
	<ul style="list-style-type: none"> <li>The evaluation of the report (conclusions and approach - accepted or not accepted) including any follow-up correspondence and further appraisals.</li> <li>The results from the comparison of the air pollution monitored levels with the AQOs</li> <li>Against each LA - a record of the date a report is received by the Contractor and the date comments were returned to the Authority; and a contact name/address.</li> </ul>
<ul style="list-style-type: none"> <li>List of those LAs that have designated AQMAs, including the pollutants and objectives these are for.</li> </ul>	<ul style="list-style-type: none"> <li>Which pollutants, area, boundary, date declared, details of any changes and AQMAs status (e.g. current or revoked).</li> </ul>
<ul style="list-style-type: none"> <li>Progress of LAs in England, London, Wales, Scotland and Northern Ireland in submitting their AP documents.</li> <li>Details of all the APs submitted for consultation including those contained within LTPs in England or LIPs in London.</li> </ul>	<ul style="list-style-type: none"> <li>The date on which the Contractors received the report and the date the appraisal report was submitted to the relevant authority.</li> <li>A unique reference number for each report submitted and contacts details.</li> <li>Whether the AP was deemed to be satisfactory to meet the authority's requirements, or whether the plan raised any serious issues/concerns that had to be addressed by the respective consultees.</li> <li>The main measures included in the AP, and the expected impacts or outcomes of the measures with regards to the AQOs, details of any quantification of impacts.</li> <li>Data on progress with implementation of the main Action Plan measures.</li> <li>Up to date the records of all the subsequent Action Plans received, as well as the revised Action Plans and progress reports.</li> </ul>

- The database should be updated each time the LA Review and Assessment or AP report is received by the Contractor and when the appraisal report is sent out to the relevant authority. All correspondence from LAs in response to appraisal reports should also be recorded on the database, as well as receipt of PRs.

- The databases should continue to be developed by the Contractor as LAQM evolves.
- The database should serve as the primary tool in relation to responding to ad hoc requests for information and/or data from the authorities, and as such the Contractor should operate and develop the database in such a way that allows swift interrogation and easy extraction of the relevant information. The Contractor will be expected to evaluate the current database upon commencement of the contract, and provide recommendations to the Authority for any improvements to be made to the capacities of the current database.

#### **5.2.21 Additional Services**

- 5.2.21.1 Although the Authority has no current plans for any additional services under this contract, the evolution of LAQM over the lifetime of the contract may require additional services to be included and will be awarded at the discretion of the Authority in accordance with Additional Condition A.21 (Change Control Note).

#### **5.2.22 Ad hoc advice to the authorities**

- 5.2.22.1 From time to time the authorities will ask the Contractor to summarise information from the database/records on LAs' progress to report to senior officials or Ministers. The requests may be at short notice (48 hours). Such ad-hoc requests are likely to range from simple requests for information requiring interrogation of the Review and Assessment database, to possible small-scale 'projects', requiring the Contractor to carry out more in-depth analysis. For such projects, the authorities may require the Contractor to produce a short summary report of the findings. Ten (10) days per year has been allocated for ad-hoc requests.
- 5.2.22.2 The GLA may require the contractor to compile a public facing report (a "Compendium of Action") summarising the actions that boroughs have taken that year (this will primarily be taken from their submitted Action Plan updates but may also require a small amount of direct contact with boroughs to obtain additional information). The "Compendium of Action" will broadly follow the format of the previous years' summary report which will be provided to the successful contractor for information. These ad-hoc requests could amount to up to 10 days per year and would be invoiced to the GLA.
- 5.2.22.3 For Wales, the Contractor will be required to provide brief written updates on changes to guidance, tools, best practice or addressing specific issues to the Welsh Air Quality Forum (WAQF). Such written documents should be in the form of either one or two (1-2) briefing notes or perhaps specific section/ chapters of the WAQF annual report. The Contractor may also, from time-to-time be required to provide a presentation at one of the WAQF's meetings or annual seminar. Any requirements to provide such information will be communicated via the WG nominated officer for this contract.

### 5.3 **Work Package 3 – Significant update of the Emissions Factors Toolkit (EFT)**

- 5.3.1 The EFT<sup>24</sup> is used by LAs to calculate vehicle emissions on local roads. The outputs can be used to input into dispersion modelling scenarios.
- 5.3.2 The Contractor will be required to make significant updates to the EFT to maintain consistency with Defra's national AQ modelling; which is likely to be updated annually for the lifetime of the contract. A significant update to the COPERT emission factors would also necessitate a review of the national AQ modelling. Past updates to the EFT have ranged from; updating the vehicle emission factors only, to adding new vehicle categories, and adding new functionality (e.g. pie charts of emissions by vehicle category).
- 5.3.3 All updates of the EFT require adequate QA/QC to be undertaken to ensure outputs are error-free before it is published. If LAs or any of the authorities identify errors in the EFT after publication, then the Contractor will fix them at its own cost and republish to timescales agreed with the Authority.
- 5.3.4 A number of associated tools also need to be updated to enable users to calculate emissions as robustly as possible. These tools are listed on the LAQM website<sup>4</sup>. Some of these updates will require the contractor to liaise with Defra's Modelling of Ambient Air Quality (MAAQ) Contractor which has responsibility to update some of the tools.
- 5.3.5 The Authority will ask The Contractor to submit for approval a costed proposal before a significant update takes place.

### 5.4 **Work Package 4 – Significant update of the UK Technical Guidance**

- 5.4.1 UK Technical Guidance<sup>6</sup> is updated as new information comes to light, and this is included within the annual *ad hoc* provision (paragraph 5.1.17). However, significant major updates are undertaken in response to new legislation, or to changes in approach agreed by any of the UK authorities.
- 5.4.2 The Contractor is required to keep under review the likely changes needed to be made to the Technical Guidance and to provide the Authority with a timely assessment of what changes are deemed necessary.
- 5.4.3 In addition, new legislation is expected to be enacted during the lifetime of The Contract, which could have significant implications to the LAQM process and to the responsibilities of LAs. The Authority will inform The Contractor of the changes required to Technical Guidance in light of any new provisions.
- 5.4.4 The Authority will ask The Contractor to submit for approval a costed proposal before a significant update takes place

### 5.5 **Work Package 5 - Updating or commenting on Policy Guidance**

- 5.5.1 Each UK authority has produced Policy Guidance<sup>7</sup>. These are updated from time to time in response to new developments or to changes in approach and this is included within the annual *ad hoc* provision.
- 5.5.2 However, new legislation is expected to be enacted during the lifetime of The Contract, which could also have significant implications to the Policy Guidance documents provided or UK LAs. The authorities will inform The

Contractor if any changes are required to Policy Guidance in light of any new provisions or from other new developments.

- 5.5.3 The Authority will ask The Contractor to submit for approval a costed proposal before an update takes place to any of the UK Policy Guidance documents.

#### 5.6 **Work Package 6 - Updating and refreshing the LAQM website**

- 5.6.1 The Authority regularly reviews its websites, and is likely to move a portion of the LAQM website<sup>Error! Bookmark not defined.</sup> content to the Government website<sup>19</sup> during the lifetime of The Contract. During this review, The Authority may also review the structure of the LAQM website to rationalise information to improve user experience.
- 5.6.2 The Contractor is required to assist in the development of both the content and structure of the LAQM website to streamline it and to improve accessibility. The Authority will keep the Contractor updated on the progress of its review and will agree a timescale for change as well as the location for specific parts of the existing website. However, it is likely that both the RSW and the Diffusion Tube Data Entry System for England will still need to be hosted on an external platform.
- 5.6.3 The Authority will ask The Contractor to submit for approval a costed proposal to update and refresh the website prior to the commencement of any work.

#### 5.7 **Work Package 7 - Designing, developing and publishing calculation tools as required**

- 5.7.1 The Contractor is expected to keep all of the LAQM calculation tools under review and to update and publish them by using the general ad hoc provision (paragraph 5.1.16).
- 5.7.2 However, new legislation is expected to be enacted during the lifetime of The Contract, which could have significant implications to the LAQM process and to the responsibilities of LAs. The Authority will discuss any significant changes with The Contractor and agree whether any existing tools need to be updated or whether new calculation tools are required to assist LAs to fulfil their statutory duties.
- 5.7.3 The Authority will ask The Contractor to submit for approval a costed proposal to update and refresh any existing or new calculation tool prior to the commencement of any work.

#### 5.8 **Work Package 8 - Additional support to the Authority to meet local limit values**

- 5.9 The Authority is working with a selected number of local authorities, identified in the 2015 NO<sub>2</sub> Plan, 2017 NO<sub>2</sub> Plan<sup>10</sup> and Supplement to the 2017 NO<sub>2</sub> Plan to enable them to meet the limit value for NO<sub>2</sub> as quickly as possible. The Contractor is required to provide on-going assistance to the Authority in response to these existing plans and to any new developments that may take place during the lifetime of the Contract (e.g. from expected new legislation).
- 5.10 To date, this work has used feasibility studies to identify the additional actions needed to be taken by the LAs to meet the limit value locally. The additional support which may be required includes dealing with specific,

detailed inquiries from local authorities regarding use of the EFT, dealing with inquiries from The Authority regarding specific uses of the EFT and help in assessing local compliance.

5.10.1 The Authority will ask The Contractor to submit for approval a costed proposal for any additional support prior to the commencement of any work.

#### **5.11 Work Package 9 - Incorporating local data within the UK compliance assessment**

5.11.1 The Authority is seeking to develop a new approach for assessing UK compliance with EU limit values that is able to reflect the impact of local action to improve air quality. A key part of this work is scoping a range of options and approaches for incorporating more local air quality monitoring data within the UK compliance assessment.

5.11.2 The contractor will be required to provide expert advice to assist the Authority in assessing a range of options for incorporating local data within the UK compliance assessment.

5.11.3 The contractor may also be required to conduct scoping studies to test the potential of one or more of the options shortlisted by the Authority.

5.11.4 The Authority will ask the Contractor to submit for approval a costed proposal prior to the commencement of any work.

#### **5.12 Work Package 10 - Providing a summary Dashboard for English LAs (not London)**

5.12.1 The Authority has an ambition to develop a Dashboard to compile and present data provided by English LAs (not London) in their Annual Status Reports<sup>46</sup>.

5.12.2 The Contractor is required to provide a Dashboard that provides enough detail to understand the LAQM history of each LA as well as providing a statistical overview which clearly shows the name and number of LAs which are compliant and which are not, and which have provided up to date Annual Status Reports. The following information should be included:

- LA name
- locations of LA monitoring sites (automatic and non-automatic)
- identifier/number of Air Quality Management Areas and their status (e.g. compliant or non-compliant)
- summary of Air Quality Action Plans and associated measures
- other information to aid The Authority

5.12.3 Further developments may include the ability to log and manage Smoke Control Areas and Clean Air Zones as well further improvements to reduce the burden on LAs and the processes they use to report progress under LAQM.

5.12.4 The Authority will ask The Contractor to submit for approval a costed proposal to develop the Dashboard prior to the commencement of any work.

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<sup>46</sup> The Annual Status Report template for English LAs (not London) is available at: <https://laqm.defra.gov.uk/review-and-assessment/report-templates.html>

- 5.12.5 In all, the costs submitted should only be for a fixed price of four years. The cost for the optional extension of 24 months will be negotiated with the successful supplier if required. Furthermore, the cost for work packages 3-10 is subject to negotiation depending on the Authority's requirements.
- 5.12.6 Work packages 1 – 2 of the Contract is to be awarded as a fixed price. However, the costs of the ad-hoc call-off for work packages 3-10 are indicative, based on estimated time required. These work packages will be individually negotiated before work starts.

**Table 7: Estimated Time and Cost for Ad-hoc Work packages 3-10**

<b>5572</b>	FY 2019/20		FY 2020/21		FY2021/22		FY 2022/23	
<b>Estimated Annual Costs Ad-hoc Element</b>	<b>No Estimated Days</b>	<b>Value £</b>						
WP3	45	To be provided by the Tenderer	45	To be provided by the Tenderer	45	To be provided by the Tenderer	45	To be provided by the Tenderer
WP4	0	To be provided by the Tenderer	0	To be provided by the Tenderer	0	To be provided by the Tenderer	90	To be provided by the Tenderer
WP5	0	To be provided by the Tenderer	0	To be provided by the Tenderer	0	To be provided by the Tenderer	35	To be provided by the Tenderer
WP6	50	To be provided by the Tenderer	0	To be provided by the Tenderer	0	To be provided by the Tenderer	0	To be provided by the Tenderer
WP7	20	To be provided by the Tenderer	20	To be provided by the Tenderer	20	To be provided by the Tenderer	55	To be provided by the Tenderer
WP8	35	To be provided by the Tenderer	20	To be provided by the Tenderer	0	To be provided by the Tenderer	0	To be provided by the Tenderer
WP9	140	To be provided by the Tenderer	35	To be provided by the Tenderer	35	To be provided by the Tenderer	35	To be provided by the Tenderer
WP10	70	To be provided by the Tenderer	10	To be provided by the Tenderer	10	To be provided by the Tenderer	20	To be provided by the Tenderer

## **5.13 Risk Management and Health and Safety**

5.13.1 The Contractor must comply with all relevant Health and Safety legislation and must produce and update annually a risk register for the Contract covering all aspects of risk to delivery of the contract. This must include but not be limited to health and safety site work undertaken in the Field Inter-comparison deliverable, but also other elements of risk: environmental, commercial, technical etc. This will apply to all parties (including any subcontractors) involved in the delivery of this project and method statements will be required for all site work. The risk assessment must be produced in a spreadsheet template provided by the Authority.

### **5.13.2 Transition of Services**

5.13.2.1 The Authority holds a contract with the incumbent for LAQM services (the "Existing Contract") 01 June 2017 which will terminate on 10 June 2019

5.13.2.2 A one month handover will operate from 07 May 2019. This time will allow the Contractor to become familiar with the operating procedures and prepare for taking over the full operation of the Services from 10 June 2019. The new Contractor is to liaise with the incumbent to ensure an efficient handover which guarantees continuity of service

5.13.2.3 During the seamless transition from the Existing Contract to the New Contract, the Contractor is expected to continue to use the same databases and archives of files. However, the Contractor will need to ensure continuity in records kept in the databases and archives.

5.13.2.4 The Contractor is responsible under the Existing Contract for resources used to transition to the New Contract. The Authority will reimburse for any antecedent or handover costs if the contractor a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price. It is the full responsibility of the Contractor to ensure it obtains and understands the necessary information, training and data before managing this Contract.

5.13.2.5 On termination of this Contract the Contractor will be required to attend a handover meeting with any new incoming contractor and to be flexible and helpful in assisting with the transfer of data and reports.

### **5.13.3 Personnel**

5.13.3.1 The Contractor must nominate a LAQM Supervisor, a project manager, a project director and potential replacements for these, should new appointments be necessary. The Contractor will be required to seek approval from the Authority prior to appointing replacement personnel in these positions. An Information Technology (IT) specialist with technical skills to enable the transferring of the webpages and hosting and maintaining content should also be named.

5.13.3.2 The Contractor will be required to demonstrate the strength and breadth of experience for technical personnel who will operate the helpdesk so that questions requiring detailed technical consideration can be answered as set out in section 5.1.2.1. It is envisaged that the helpdesk operators would be at Consultant, Senior Consultant grade, or equivalent and they

must have a general understanding of all aspects of LAQM TG16 and the other Guidance documents.

5.13.3.3 The Authority will nominate a Project Officer who will manage the Contract and a central coordinator for LAQM. Contact details will be provided for the relevant contacts in the DAs and GLA.

#### **5.13.3.4 Performance Monitoring**

5.13.3.4.1 Proposed Key Performance Indicators (KPIs) for the Contractor are located in **Table 11**.

#### **5.13.4 Reporting**

5.13.4.1 All Contract deliverables should be in electronic format unless specified by the Authority's nominated officer.

5.13.4.2 Quarterly and annual management reports will be required from the Contractor. The quarterly management reports will be linked to invoices submitted for payment. The fourth quarter report will form the annual report and a separate quarterly report is not required. Quarterly reports are not to be more than eight (8) pages long and should be provided as per the timetable in **Table 8** below (Summary of Tasks and Deliverables for the Contract).

5.13.4.3 Quarterly Reports will be required to include as a minimum:

5.13.4.4 Progress overview, not more than 4 pages:

- Brief summary of work undertaken in Work Package 1 in the quarter highlighting anything unusual or likely to be of interest to the Authority.
  - The amount of ad- hoc budget used, split by country.
  - Any new or significantly updated items on webpages including details of any new FAQs and updates to tools.
  - A brief summary of helpdesk statistics - how many calls and e-mails in the quarter and how many unique website hits overall to show outline of progress against the KPIs.
  - A brief summary of work completed under any of the other work packages.
  - Details of any complaints made to the helpdesk and how these have been addressed.
  - Details of any accidents or near misses from site work.
  - Any instances of perceived Conflict of Interest information - the Authority may also request a copy of the database of details of potential Conflict of Interest.
  - Interactions with and UK Ambient Air Quality Assessments (AAQA) Teams
- Progress on any ad hoc work undertaken in the quarter - applications received, sent out, consensus meeting held etc.

5.13.4.5 Annual Reports will be required to include as a minimum:

5.13.4.6 Part 1: Work Package 1 – Technical Support(not more than 10 pages):

- Summary of outcomes under Work Package 1 in the year, changes to Review and Assessment/Action Planning process, changes to tools, significant changes to websites or guidance.
- Helpdesk statistics, including a cumulative summary of the number of calls/e-mails received per category type and time allocated to each enquiry broken down by country; a summary of the number of requests broken into categories (to be defined at a later date with the Authority).
- An update of changes made to FAQs, Tools and Websites.
- Details of any significant and interesting ad hoc work undertaken which the Authority would like to follow up.
- Number of days used of the ad hoc budget split by country.
- Where relevant data and other information should be separated and presented on a country-specific basis.
- Risk register for the Contract.
- Conflicts of Interest
- Interactions with the Contractor and UK Ambient Air Quality Assessments (AAQA) Teams

5.13.4.7 Part 2: Work Package 2 - Report Appraisal (not more than 10 pages):

5.13.4.8 The contractor will provide an update on the following:

- Executive summary of work undertaken in the year.
- Report appraisal progress against estimated number of reports to be appraised in the year, progress on number of reports submitted by LAs split by report type, for the current round of assessment.
- Statistics on the number of reports requiring a Detailed Assessment or declaration of an AQMA.
- Details of any outstanding reports which have not been submitted in the year for the current round of assessment, with details on which LAs these are.
- Turnaround time for appraisals – hours to appraise each report, weeks to turnaround from receipt and performance against targets in KPIs.
- Progress statistics overall for LAQM in terms of number of AQMAs declared/revoked within the year. Summary of current numbers of AQMAs, the pollutants and averaging periods they are for.
- Record of use of any ad hoc budget for the year and where the request came from – Defra, WG, SG, DAERA.
- Information of the reasons why AQMAs have been declared or revised – traffic, industry etc in a clear format with a graph to show relative proportions.
- Information of the reasons why AQMAs have been revoked (e.g. improvement in air quality, actions successful, or for administrative reasons).
- Information summary on the types of measures being used in Action Plans and lists of any Action Plans which have included quantification of measures.
- Where relevant data and other information should be separated and presented on a country-specific basis.

- The content will be discussed in the annual meeting. The Contractor should prepare a brief presentation on progress to present to the Authority at the meeting.

- 5.13.4.9 Part 3: Work Packages 3 to 10 (not more than 4 pages):
- 5.13.4.10 Summary of outcomes under all other work package in the year, including outcomes, lessons learned and any recommendations for future consideration by The Authority.
- 5.13.4.11 The Contractor will be required to produce a Final Evaluation Report which should be submitted to the authorities for discussion six months prior to the expiry of the Contract. The report should evaluate all of the work packages contracted during the lifetime of the contract. The report should cover recommendations for changes to the specification of the Contract and scope of support provided to LAs, a technical description of all support currently provided, and an evaluation of the level of success the support has provided within the scope of LAQM.
- 5.13.4.12 Following discussion of the report, the Contractor will take on board any comments/amendments and produce a final report four weeks prior to the expiry date of the Contract. The Contractor will provide the Authority with the report in a word or PDF format as requested. It is estimated that the final summary and evaluation report will not be in excess of 30 pages in length.

#### **5.13.5 Meetings**

- 5.13.5.1 Meetings between the Defra's Nominated Officer, the DAs the GLA and the Contractor are required and will be held twice a year to discuss general progress. These meetings are likely to be held at the Defra Offices, London, although may also be periodically held at Devolved Administration Offices in Edinburgh, Cardiff or Belfast or GLA office in London.
- 5.13.5.2 The Contractor will provide the secretariat for these meetings and will prepare a short summary note of substantive points and actions arising from them. The Annual meeting, in January each year, will involve all parties, whereas the Update meeting, in July 2019, will involve only The Authority and representatives from the Contractor.
- 5.13.5.3 The Contractor is expected to send no more than three (3) representatives to the meetings.
- 5.13.5.4 An initial meeting will take place in April or May 2019 in the transition period to discuss responsibilities, requirements and deliverables and talk through the Contract. This meeting will be held at the Authority's offices in London. Representatives from the Contractors will be in attendance.
- 5.13.5.5 Additional meetings between the participating groups may be required throughout the course of the Contract with a minimum of 1 (one) week notice. The Contractor will, if requested, attend occasional meetings hosted by the Authority in London.
- 5.13.5.6 An annual cycle for submission of reports, invoices and meetings is shown below in **Table 8**.

**Table 8 - Project Management Annual Cycle**

Item		Report/Meeting Detail
Kick off meeting	June 2019 with the Contractor.	
Quarter 2	Report due 15 July to summarise 1 April to 30 June. Report written and submitted to the Authority by the Contractor.	Invoices due 15th day of May, June and July for work completed in the previous month. Invoice items for any specific work package will not be paid without detail in the corresponding report or other submitted evidence showing all deliverables have been achieved.
Meeting 1	July update meeting with the Contractor only.	
Quarter 3	Report due 15 October to summarise 1 July to 30 September. Report written and submitted to the Authority by the Contractor.	Invoices due 15th day of July, August and September for work completed in the previous month. Invoice items for any specific work package will not be paid without detail in the corresponding report or other submitted evidence showing all deliverables have been achieved.
Quarter 4	Annual Report due 15 January to summarise calendar year (1 January to 31 December). Report written and submitted to the Authority by the Contractor.	Invoices due 15th day of October, November and December for work completed in the previous month. Invoice items for any specific work package will not be paid without detail in the corresponding report or other submitted evidence showing all deliverables have been achieved.
Meeting 2 - Last week of February.	Annual Meeting on progress. The Contractor will be in attendance, along with representatives from the authorities.	
Quarter 1	Report due 15 April to summarise 1 January to 31 March. Report written and submitted to the Authority by the Contractor.	Invoices due 15th day of January, February and March for work completed in the previous month. Invoice items for any specific work package will not be paid without detail in the corresponding report or other submitted evidence showing all deliverables have been achieved

### 5.13.6 Summary of all Deliverables

5.13.6.1 A summary of deliverables for Work Packages 1 and 2 is shown in 9, and a summary of deliverables for Work Packages 3 to 10 is shown in **Table 10**.

**Table 9 - Summary of Tasks and Deliverables for Work Packages 1 and 2**

Topic	Task	Deliverables	Due date
<b>Helpdesk and web pages</b>	To provide real time (or near real time) help and guidance to LAs through the LAQM Helpdesk.	Adequate and timely support and guidance to LAs according to the current Technical Guidance.	Continuous throughout contract duration.
	To manage and update the LAQM Website to ensure it meets user needs and fully reflects official guidance.	Ensure LAQM webpages fully reflect and support official guidance and ensure all web links work. Keep the FAQs up to date and relevant.	At least every 6 months
<b>Report Submission Website</b>	To manage and update the Report Submission Website (RSW) and ensure it enables LAs to prepare and submit their statutory LAQM reports and provides access for the authorities (section 5.1.10).	Manage the RSW so that it allows: <ul style="list-style-type: none"> <li>• LAs to submit their statutory reports</li> <li>• Full access to authorities</li> </ul>	Continuous

Topic	Task	Deliverables	Due date
	<p>To use the data on submitted reports including monitoring data to encourage <b>English (excluding London) LAs</b> to submit ASR reports within the intended reporting year. These data will be used to identify LAs who will be sent reminder letters by the Contractor. Templates for these letters will be supplied by the Authority.</p> <p>These data will subsequently be supplied to the Authority as a list of LAs which have not submitted reports by February. This will enable the Authority to issue Powers of Direction letters to the relevant LAs.</p>	<p>Step 1) Send a pre-emptive reminder to all LAs of the upcoming submission deadline</p> <p>Step 2) Send a reminder letter to LAs with non-submitted ASRs 3 months after the deadline</p> <p>Step 3) Send a reminder letter to LAs with non-submitted ASRs 6 months after the deadline</p> <p>Step 4) Provide the Authority with a list of LAs with non-submitted reports as of 14<sup>th</sup> February each year</p> <p>If all expected ASRs are submitted before the full process of steps 1-4, no further actions are required by the Contractor</p>	<p>Tier of communications at set points after the due date for each report/authority area:</p> <p>Step 1) May each year</p> <p>Step 2) Between 30<sup>th</sup> September and 5<sup>th</sup> October each year</p> <p>Step 3) Between 31<sup>st</sup> December to 5<sup>th</sup> January</p> <p>Step 4) within 5 working days of 14<sup>th</sup> February</p>
<b>AQMA data</b>	Provide AQMA Data to Ricardo E&E (Ricardo E&E will contact the LAs directly to obtain GIS “shp” files).	Update AQMA information on webpages to include AQMA orders from LAs	Every 3 months as a minimum.

Topic	Task	Deliverables	Due date
<b>Tools</b>	<p>Keep available to LAs all tools currently provided via the LAQM web.</p> <p>Maintaining and update the following:</p> <ul style="list-style-type: none"> <li>• EFT – provide desk instructions as required, become familiar with workings and undertake routine maintenance.</li> <li>• All NO<sub>2</sub> diffusion tube QA/QC tools</li> <li>• Industrial Emissions Screening Tools (Biomass and Industrial Emissions)</li> <li>• NO<sub>2</sub> fall-off with distance from kerb.</li> </ul> <p>Liaise with other suppliers regarding the update of other tools as necessary: i.e. background maps, NO<sub>x</sub>/NO<sub>2</sub> calculator, AQMA maps.</p>	<p>Make tools available to LAs via the LAQM website.</p>	<p>Continuous</p> <p>As a guide:</p> <p>5 days per year for a minor update for EFT.</p> <p>1 day each for 3 tools which the contractor may be required to update.</p> <p>See Section 5.1.4.3.</p>
<b>NO<sub>2</sub> Diffusion Tubes</b>	<p>QA/QC Framework</p> <ul style="list-style-type: none"> <li>• Promote AIR-PT Scheme and harmonised procedures to LAs through the helpdesk and webpages.</li> </ul> <p>Field Inter-comparison Exercise</p> <ul style="list-style-type: none"> <li>• Coordinate results from the AIR-PT Scheme and Field Inter-comparison Exercise to provide information on Laboratory performance to LAs and back to the Laboratories.</li> <li>• Publish and maintain the exposure calendar</li> </ul>	<p>Laboratories supplying the diffusion tubes participate in the AIR-PT QA/QC Programme</p> <p>A monthly field-based inter-comparison exercise is performed and managed, alongside the current QA/QC procedures for the NO<sub>2</sub> data within the Network.</p> <p>Results from the above are coordinated, analysed and made available to LAs.</p> <p>Exposure calendar provided to LAs via webpages.</p>	<p>Continuous</p>

Topic	Task	Deliverables	Due date
	<p>Data gathering, analysis and sharing: Collection and collation of data from LAs and the field inter-comparison exercise to provide information via the web on:</p> <ul style="list-style-type: none"> <li>• Data entry System</li> <li>• Bias and precision</li> <li>• Bias adjustment factors</li> </ul>	<p>Maintain the NO<sub>2</sub> tube data entry system (England only). Maintain a bias adjustment spreadsheet containing data from co-location studies nationally. Maintain a bias and precision spreadsheet to help with local calculations.</p>	<p>Continuous for data entry system and spreadsheets.</p>
<b>Ad hoc technical advice on LAQM</b>	To provide the authorities with ad hoc guidance and advice on LAQM	<p>Brief written reports on topics addressed. 35 days per year</p>	As requested
	To update the technical guidance and keep all guidance under review.	<p>Up to date technical guidance. Up to 10 days per year.</p>	As requested
	Maintain all web links in the online version of the Technical Guidance (currently TG (16)) to match new webpages. No new printed versions are to be provided.	<p>Updated LAQM.TG (16) online only. Maximum three (3) working days at Consultant grade or equivalent from the 10 day budget in row above</p>	Continuous
<b>VCM</b>	Contract Kings College and pay for VCM provision on a monthly basis.	Kings keep VCM portal up to date and available for LAs to use.	Continuous, monthly payments.

Topic	Task	Deliverables	Due date
<b>Appraisal of LAs air quality Review and Assessment reports</b>	<p>To appraise LA Review &amp; Assessment reports:  Appraise the following Review and Assessment reports: ASRs, APRs, USAs, Progress Reports and Detailed Assessments within 5 weeks of receipt.  Comply with checklists and quality control to ensure LAs appraisals are accurate, consistent and fit for purpose.  Liaise as necessary with appropriate authority.  Agree with The Authority which English LAs will have their ASR appraised</p>	<p>Appraisal of R&amp;A reports within 5 weeks of receipt and send Appraisal Response to the appropriate authority.  Appraisal of appraisal responses within 3 weeks and send Appraisal Response checklist to the appropriate authority.  Log appraisals in databases – return official responses to the appropriate authority.  Identify examples of good practice for the LAQM website; e.g. where the Guidance has been properly applied and the local situation is clearly explained and presented.</p>	<p>Ongoing.  As per the phased approach – Round 6 to Round 7 – where appropriate.</p>

Topic	Task	Deliverables	Due date
<p><b>Action Plan appraisal</b></p>	<p>To assess LA Action Plans.            Agree with The Authority which English LAs will have their Action Plans appraised</p>	<p>Appraise draft Action Plans within 3 weeks of receipt and ensure LAs have followed accepted criteria and checklists – i.e. show all relevant evidence.</p> <p>Produce a summary appraisal of each draft Action Plan and circulate to the appropriate authority, any other relevant Government Departments and government officials for consideration within 15 working days of receipt.</p> <p>Only when requested to do so by the appropriate authority; ensure that Final and Revised Action Plans have followed accepted criteria and checklists – i.e. show all relevant evidence.</p> <p>After the draft stage, a final summary appraisal (with covering note) will be submitted to the appropriate authority for transmission to LAs concerned.</p> <p>Identify examples of good practice for the LAQM website; e.g. where the Guidance has been properly applied and the local situation is clearly explained and presented.</p>	<p>Ongoing.</p>

Topic	Task	Deliverables	Due date
<b>Action Plan Progress Reports Appraisal</b>	To appraise Action Plan Progress Reports.	Appraise Action Plan Progress Reports and flag up any concerns for the attention of the appropriate authority. Follow policy guidance and checklists when appraising reports. Take account of Detailed Assessments or other supplementary information submitted by LAs. Identify reports which demonstrate good practice for the LAQM website.	Ongoing.
<b>R&amp;A templates and checklists</b>	To review all appraisal templates and checklists.	Review appraisal templates and checklists at least annually and recommend improvements and changes to the appropriate authorities.	Annually as a minimum.

Topic	Task	Deliverables	Due date
<b>Database and archives</b>	To maintain and update databases and archives listed under Work Package 2.	Maintain and expand as necessary, providing improvements to capacity where needed. Produce regular summary and statistical reports on the database in quarterly reports and ad hoc requests. Review databases at least annually and recommend improvements and changes to the appropriate authorities.	Continuous, linked to short notice data requests within 48 hours.  Annually as a minimum.
<b>Risk assessment</b>	Undertake an annual risk assessment for the contract in requested format.	Excel based risk assessment	Annual
<b>Quarterly Management Reports</b>	Quarterly Report linked to invoice on behalf of all Lots.	As set out in <b>Table 7</b>	As set out in <b>Table 7</b> .
<b>Annual report</b>	Annual report on LAQM	Once a year as set out in <b>Table 7</b>	As set out in <b>Table 7</b>
<b>Final Evaluation Report</b>	Final Report evaluating contract.	Once, as set out in <b>Table 7</b> .	Once, as set out in <b>Table 7</b> .
<b>Contract Meetings</b>	Meetings with Defra nominated officer, DAs and GLA – 2 per year. Meetings at Defra offices.	Chairing meetings, providing minutes and action points. 2 meetings per year	As set out in <b>Table 7</b>

Topic	Task	Deliverables	Due date
<b>Conflict of Interest Information</b>	Database of contracts held by the Contractor for LAQM work with LAs since the start of the contract. To be made available to the Authority on request. The Contractor must manage activities in LAQM Report Appraisal Contract based on the information in the database.	Database of information on potential conflict of interest	Quarterly as a minimum.

**Table 10 Summary of Tasks and Deliverables for Work Packages 3 to 10**

<b>Work Package</b>	<b>Topic</b>	<b>Task</b>	<b>Deliverables</b>	<b>Due date</b>
3	<b>Significant update of the Emissions Factors Toolkit (EFT)</b>	Update the EFT to maintain consistency with Defra’s national AQ modelling, undertake adequate QA/QC and update the user guide and associated tools. Liaise with Defra’s Modelling of Ambient Air Quality (MAAQ) Contractor which has responsibility to update some of the tools. See paragraph 5.3 for details.	Detailed Plan and timescale of changes needed when requested by the Authority New, updated EFT Updated User Guide Updated associated tools	To be agreed with the Authority [Note: This work package may be an annual requirement.]
4	<b>Significant update of the UK Technical Guidance</b>	When required, to provide the Authority with a detailed plan and timescale to update the UK Technical Guidance The Contractor is expected to keep under review the likely changes needed to be made and to provide them to the Authority. See paragraph 5.4 for details.	Regular review of changes needed to the Technical Guidance. Detailed Plan and timescale of changes needed when requested by the Authority Updated Technical Guidance when requested by the Authority	To be agreed with the Authority
5	<b>Updating or commenting on the Policy Guidance</b>	When required, to provide each UK authority with assistance to help them update their individual Policy Guidance. The extent of input required may differ between the authorities. See paragraph 5.5	Keep a list of possible changes for the authorities to consider for updated Policy Guidance. If required, provide a detailed plan and timescale of changes needed when requested for by any of the authorities If required, updated Policy Guidance when requested by any of the authorities.	To be agreed with the Authority

Work Package	Topic	Task	Deliverables	Due date
6	<b>Updating and refreshing the LAQM website</b>	<p>When required, to assist the Authority to review the LAQM website provision and to provide assistance to move a portion of the LAQM website content to the Government website.</p> <p>When required, to review the structure of the LAQM website with the aim of rationalising information and improving user experience.</p> <p>See paragraph 5.6.</p>	<p>A detailed plan and timescale to develop content for the government website</p> <p>A plan and timescale to rationalise and improve the LAQM website</p> <p>New content for the government website</p> <p>New, improved LAQM website (expected to include the RSW and the Diffusion Tube Data Entry System for England)</p>	To be agreed with the Authority
7	<b>Designing, developing and publishing new calculation tools as required</b>	<p>When required, to provide a detailed plan and timescale to update existing calculation tools or to develop new calculation tools in response to new legislation or other changes.</p> <p>See paragraph 5.7.</p> <p>[Note: this work is in addition to the expected need to keep all of the LAQM calculation tools under review in line with the ad hoc provision (paragraph 5.1.16)].</p>	<p>Detailed plan and timescale to update existing calculation tools or to develop new calculation tools.</p> <p>Delivery of updated of new tools as agreed with the Authority</p>	To be agreed with the Authority

Work Package	Topic	Task	Deliverables	Due date
8	<b>Additional support to The Authority to meet local limit values</b>	When required, to provide assistance to the Authority to focus air quality improvement within specific local authorities under existing plans and under any new developments that may take place during the lifetime of the Contract. see paragraph 5.8.	A detailed plan and timescale to undertake the work required. To provide the required assistance [Note : To date, assistance has focused on individual LA feasibility studies. It may include dealing with specific, detailed inquiries from local authorities or dealing with inquiries from The Authority.	To be agreed with the Authority
9	<b>Incorporating local data within the UK compliance assessment</b>	When required, to assist the Authority to develop a new approach for assessing UK compliance with EU limit values that is able to reflect the impact of local action to improve air quality. See paragraph 5.11	A detailed plan and timescale to undertake the work required. To provide the required assistance, which may include: <ul style="list-style-type: none"> <li>• helping scope a range of options and approaches to incorporate more local air quality monitoring data within the UK compliance assessment.</li> <li>• providing expert advice to assist the Authority in assessing a range of options for incorporating local data within the UK compliance assessment.</li> <li>• conducting scoping studies to test the potential of one or more of the options shortlisted by the Authority.</li> </ul>	To be agreed with the Authority

Work Package	Topic	Task	Deliverables	Due date
10	<p><b>Providing a summary Dashboard for English LAs (not London)</b></p>	<p>To assist the Authority to develop a Dashboard to compile and present data provided by English LAs (not London) in their Annual Status Reports.</p> <p>To suggest future improvements or additions to the Dashboard to improve the Authorities' understanding of compliance and air quality improvements.</p> <p>See paragraph 5.9.</p>	<p>A detailed plan and timescale to develop or update the Dashboard.</p> <p>A Dashboard to provide the detail to understand the LAQM history of each English LA as well as providing an overview of progress in compliance.</p> <p>If required, an updated Dashboard.</p>	<p>To be agreed with the Authority</p>

## **6 GOVERNANCE / CONTRACT MANAGEMENT**

- 6.1 The Contractor shall be managed by a Nominated Officer within the Authority who will be responsible for the day to day management of the contract. The Contractor will appoint a Project Manager who will act as the principal point of contact for the Authority.
- 6.2 Regular review meetings will be held to review progress of the Contract and to discuss any issues that arise. It will be at the discretion of the Authority as to how these meetings will take place.
- 6.3 Once a year a steering group will meet (the Annual meeting) to hold a review meeting to review progress, outcomes and delivery of the fund following the production of the annual report. The steering group will consist of policy and evidence representatives from the Authority's Air Quality Team, Network Procurement, DAs, GLA and representatives from the Contractor.
- 6.4 The Contractor will be responsible for organising and providing the secretarial and administrative support for steering group meetings. The Authority's Nominated Officer will assist with booking meeting rooms at the Authority's London offices, but the Contractor will be expected to provide full secretariat and presentations.
- 6.5 The Contract will be managed in accordance with the Authority Terms and Conditions, contained in Appendix B and KPIs/credit regime contained within Section 8 Performance Management Framework.

## **7 PROGRAMME OF WORK AND MILESTONES**

- 7.1 Tenderers are invited to propose a work programme designed to meet the above objectives, requirements and timetable. Tenders should include a time schedule for the work that identifies the main stages, tasks and key milestones – these will then be used to monitor progress.
- 7.2 The Authority has an agreement with the incumbent Contractor to provide support for a handover for the period specified prior to the start of contract (a minimum of one (1) month between the period 07/05/19 to 07/06/19). Such support will include, but not be limited to, transfer of accounts and existing loan agreements and the transfer of standing orders and banking details.

## **8 PERFORMANCE MANAGEMENT FRAMEWORK (Including Service Levels and Key Performance Indicators)**

- 8.1 As part of the Authority's continuous drive to improve the performance of all Suppliers, this Performance Management Framework (PMF) will be used to monitor, measure and control all aspects of the Supplier's performance of contract responsibilities.
- 8.2 The PMF purpose is to set out the obligations on the Supplier, to outline how the Supplier's performance will be evaluated and to detail the sanctions for performance failure.
- 8.3 The Authority may define any reasonable performance management indicators for the Supplier under the following categories:
  1. Contract Management
  2. Delivery and support
  3. Quality of Service
  4. Cost
  5. Continuous Improvement

8.4 The above categories are consistent within all Contract awards allowing the Authority to monitor Suppliers performance at both individual contract level and at enterprise level with the individual Supplier.

## 9 **Key Performance Indicators**

9.1 The Authority is open to your organisations proposals for additional KPI's which will be discussed at the Inception meeting.

9.1.1 The Authority will work closely with contractors on regular occasions to review performance against KPIs and if appropriate agree action plans. The Authority expects contractors to agree and implement these plans. If this does not happen, only then will service credit principles will be applied.

9.1.2 KPIs are essential in order to align supplier performance with the requirements of the Authority and to do so in a fair and practical way. KPIs have to be realistic and achievable; they also have to be met otherwise indicating that the service is failing to deliver.

**Table 11: Key Performance Indicators (KPI's)**

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating (1- 3 scale)		
				1	2	3
Delivery and support	<b>KPI 1</b> – Reporting deliverables provided to agreed timescales	Quarterly and Annual reports are delivered to timescales specified in Table 8.	The Contractor supplies reports to end user in an agreed format (PDF) and to timescales within Table 8.	Reports not provided on time and to required standard	NA	Reports are provided on time and to required standard
Quality of Service	<b>KPI 2</b> – Helpdesk queries responded to within agreed timescales.	Helpdesk will respond to queries relating to Local Air Quality Management received via email, telephone and answer phone messages.	Contractor responds to Helpdesk queries:	Less than 85% of queries dealt with within specified timescales	Between 85% and 90% of queries dealt with within specified timescales	More than 90% of queries dealt with within specified timescales
			a) Via Email or answer phone within 1 working day	Less than 85% of queries dealt with within specified timescales	Between 85% and 90% of queries dealt with within specified timescales	More than 90% of queries dealt with within specified timescales
			b) Phone call (received during office hours) within 1 hour	Less than 85% of queries dealt with within specified timescales	Between 85% and 90% of queries dealt with within specified timescales	More than 90% of queries dealt with within specified timescales

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating (1- 3 scale)		
				1	2	3
Quality of Service	<b>KPI 3 – Encourage</b> all LAs to submit their reports within the intended reporting year.	Reminders to be sent to the <b>English (excluding London)</b> LAs to encourage timely submission of ASRs. The templates for the Reminders will be supplied by the Authority. The timetable of reminders is specified within Table 9.	a) The Contractor issues reminder letters according to the agreed process.	Only 1 of 3 reminder letters (either pre-emptive reminder, 3 month chasing reminder or 6 month chasing reminder) sent to relevant LAs within required timescales	2 of 3 reminder letters (from pre-emptive reminder, 3 month chasing reminder or 6 month chasing reminder) sent to relevant LAs within required timescales	All reminder letters (pre-emptive reminder, 3 month chasing reminder and 6 month chasing reminder) sent to relevant LAs within required timescales
			b) Contractor provides the Authority with the list of LAs with non-submitted reports in February	The list is not provided to the Authority on time	NA	The list is provided to the Authority on time
Quality of Service	<b>KPI 4 – Appraisals</b> of LA reports are completed within agreed timescales.	LA report Appraisals should be completed within 5 weeks of submission by LAs via the RSW.	Contractor completes Appraisals within agreed timescales.	Less than 85% of reports requiring appraisal appraised within 5 weeks.	Between 85% and 90% of reports requiring appraisal appraised within 5 weeks.	More than 90% of reports requiring appraisal appraised within 5 weeks.

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating (1- 3 scale)		
				1	2	3
Quality of Service	<b>KPI 5</b> – Action Plan Progress Report appraisal are completed within agreed timescales.	Action Plan Progress Report appraisals (approx. 1-2 pages) to be submitted to the relevant authority within two weeks of receipt.	Contractor sends Action Plan Progress Report appraisals to appropriate authority within two weeks of receipt.	Less than 85% of plans requiring appraisal are appraised and appraisals sent to the appropriate authority within two weeks of receipt	Between 85% and 90% of plans requiring appraisal are appraised and appraisals sent to the appropriate authority within two weeks of receipt	Over 90% of plans requiring appraisal are appraised and appraisals sent to the appropriate authority within two weeks of receipt
Quality of Service	<b>KPI 6</b> – Update Risk Register annually.	The Risk Register is required to be updated annually in an Excel spreadsheet format.	Contractor updates Risk Register to an agreed format and timescale.	Risk register not updated within agreed timescales	NA	Risk register updated within agreed timescales
Quality of Service	<b>KPI 7</b> – Update Web page content to agreed standards within agreed timescales.	Substantive updates to Web pages (LAQM) will have individual timescales, to be agreed when update commissioned.	Contractor updates Web pages to an agreed format and timescale.	Webpage content not updated within agreed timescales	NA	Webpage content updated within agreed timescales

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating (1- 3 scale)		
				1	2	3
Quality of Service	<b>KPI 8</b> – Manage conflict of interest to agreed standards.	Standards by which to measure successful management of conflict of interest.	Contractor manages and reports issues of Conflicts of Interest quarterly	Conflict of interest not managed to agreed standards and timescales	NA	Conflict of interest managed to agreed standards and timescales
Continuous Improvement	<b>KPI 9</b> – demonstrates active and positive action for investigating improvements to both quality and cost savings to agreed milestones	An 'Ideas Register' which documents quality and cost saving ideas are robustly evaluated.	Contractor will provide an 'Ideas Register' which will detail proposed suggestions for improving quality and/or cost. This will be reviewed annually.	No evaluated ideas proposed by contractor	NA	Evaluated ideas proposed by contractor
Continuous Improvement	<b>KPI 10</b> – Demonstrating response to ad hoc needs of the contract	Completion of ad hoc projects to the standards and timescales agreed when the work is commissioned.	Ad hoc projects will be evaluated individually against the KPI rating, against the standards and timescales agreed between the Contractor and Authority when work is commissioned.	Ad hoc support deliverable as agreed between the Contractor and Authority is not provided on time or to required standard	NA	Ad hoc support deliverable as agreed between the Contractor and Authority is provided on time and to the required standard

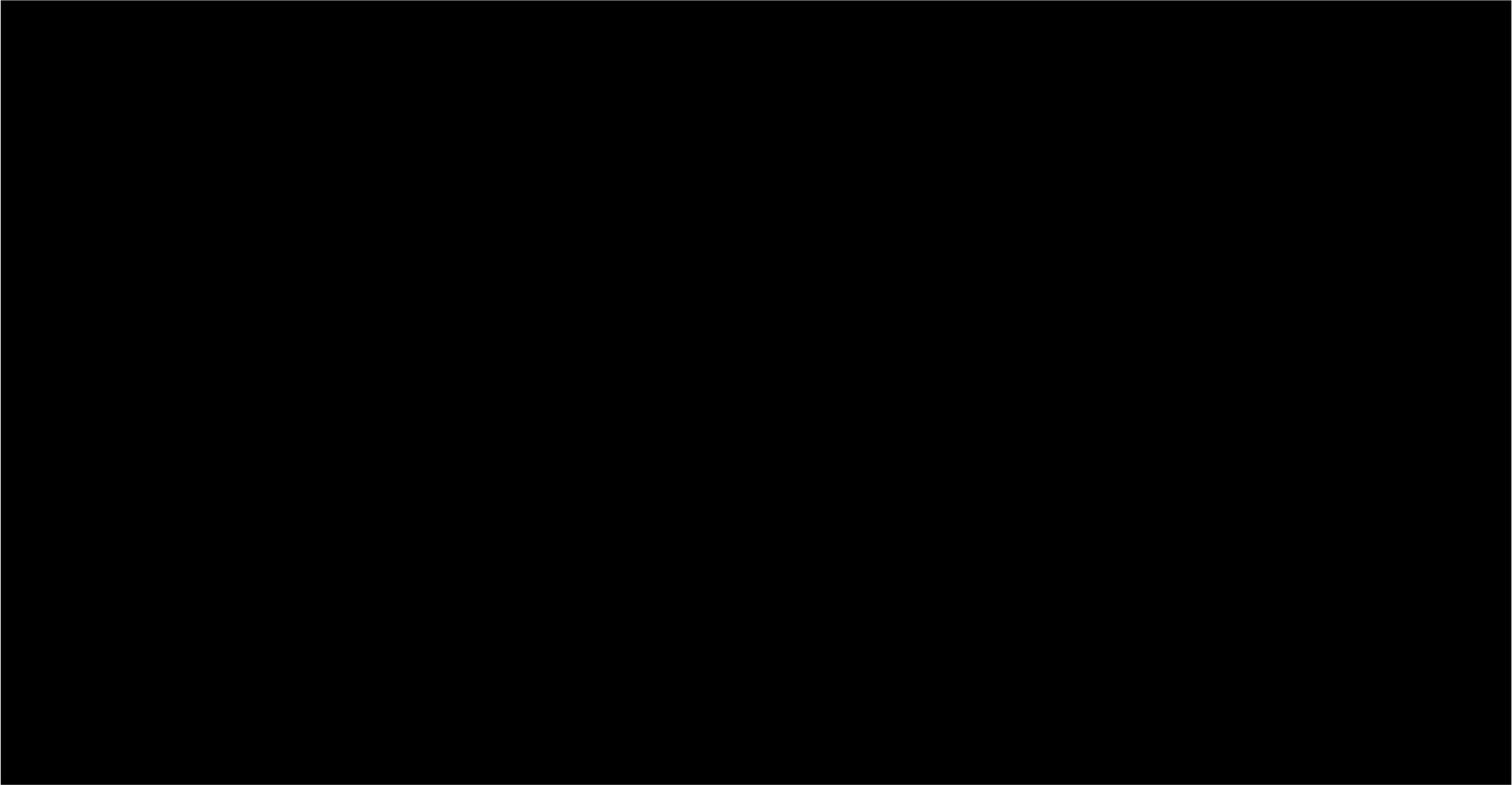
## SCHEDULE 2 PRICING

The Authority will pay to the Supplier no more than the fixed sum of:

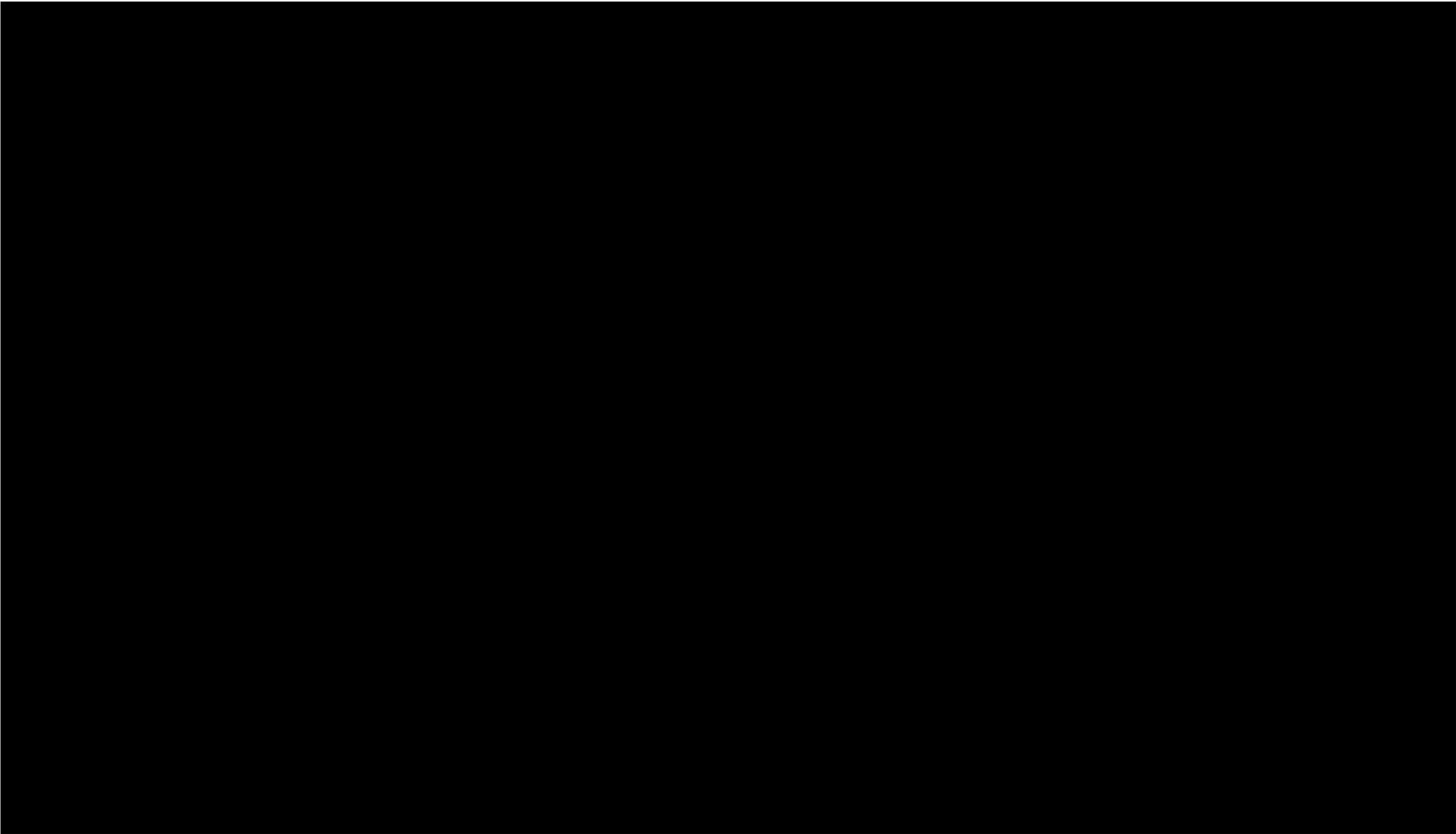
**£1,099, 705.79 (exclusive of VAT)**

2. Subject to any variation of the Project, the amount in paragraph 1, above, shall remain firm throughout the duration of the Agreement.
3. In the event that the Agreement is varied, the amount in paragraph 1 shall be adjusted by such reasonable sum as may be agreed, in writing, between the Customer and the Contractor.
4. The Payment arrangements shall be as follows:
  - 4.1. Payments shall be made in monthly payment/s linked to the satisfactory completion by the Contractor of the tasks detailed in Schedule 1.
  - 4.2. All payments quoted are exclusive of VAT.
  - 4.3. Costs are broken down in accordance with the Total Project Costs in the attached "Pricing Schedule".
5. The Contractor shall provide the Customer with an invoice of the Eligible Costs.
6. Within 30 days of receiving an invoice satisfactory to the Customer, the Customer shall pay to the Contractor the amount of the Eligible Costs which the Customer reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period.
7. The Customer is liable to the Contractor only for their respective payments in accordance with this Schedule.
8. Any overpayment to the Contractor made by the Customer, whether of Project price or of VAT, shall be a sum of money recoverable by the Customer.

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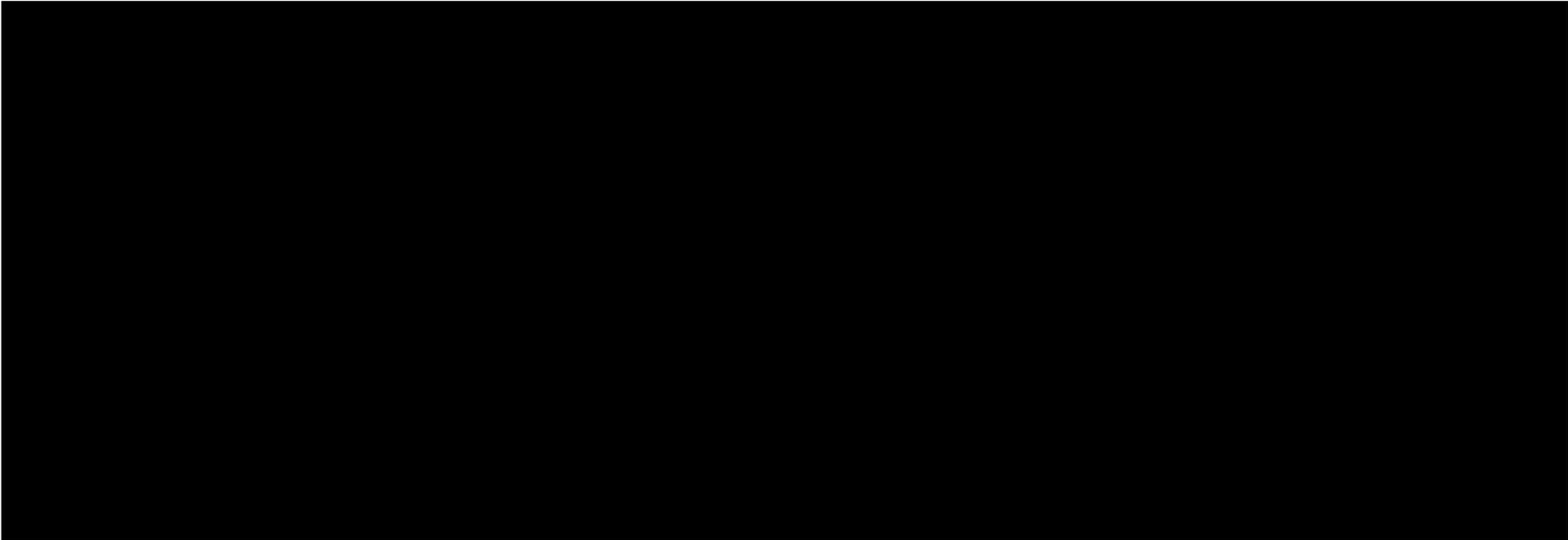


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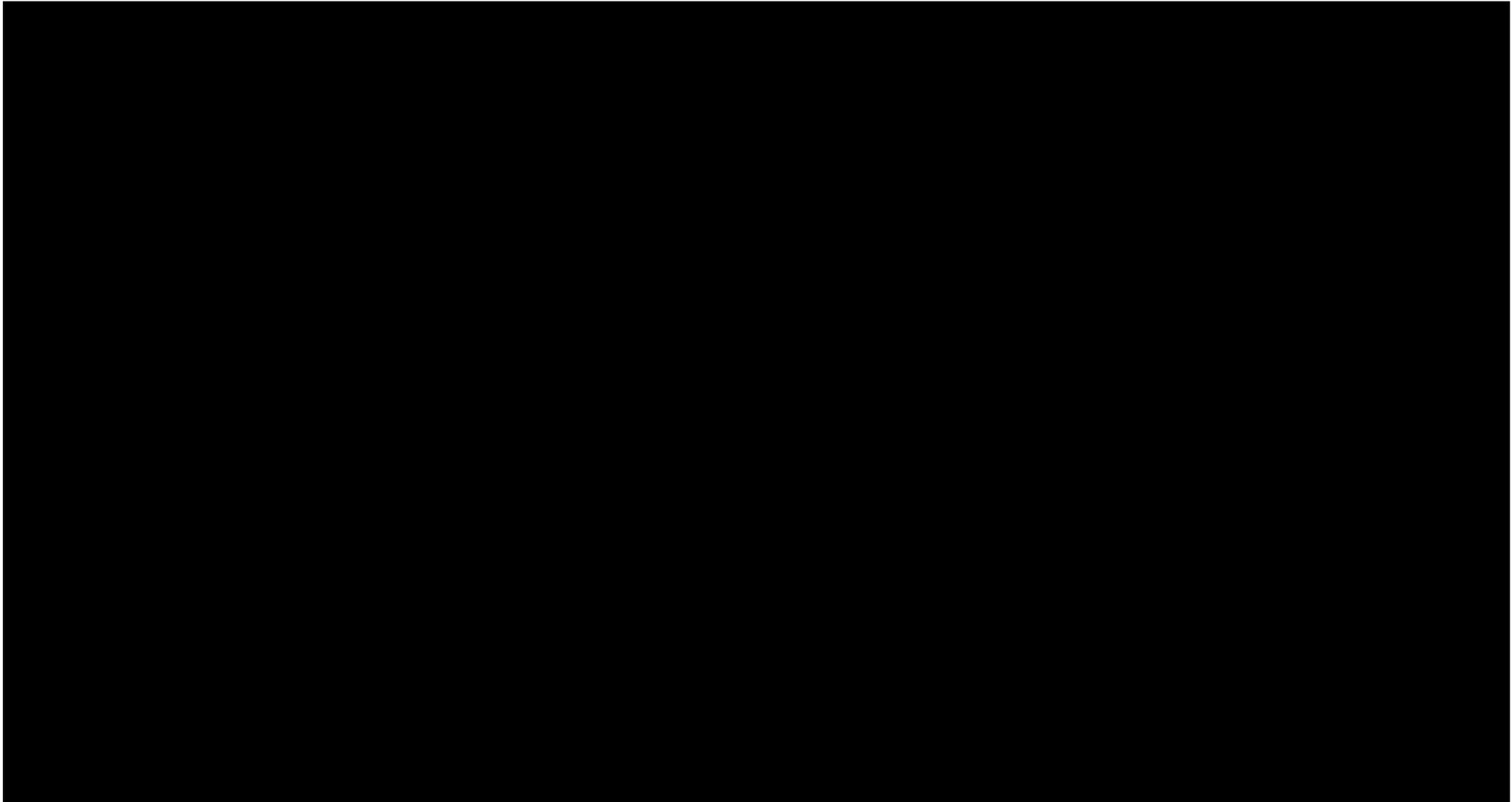




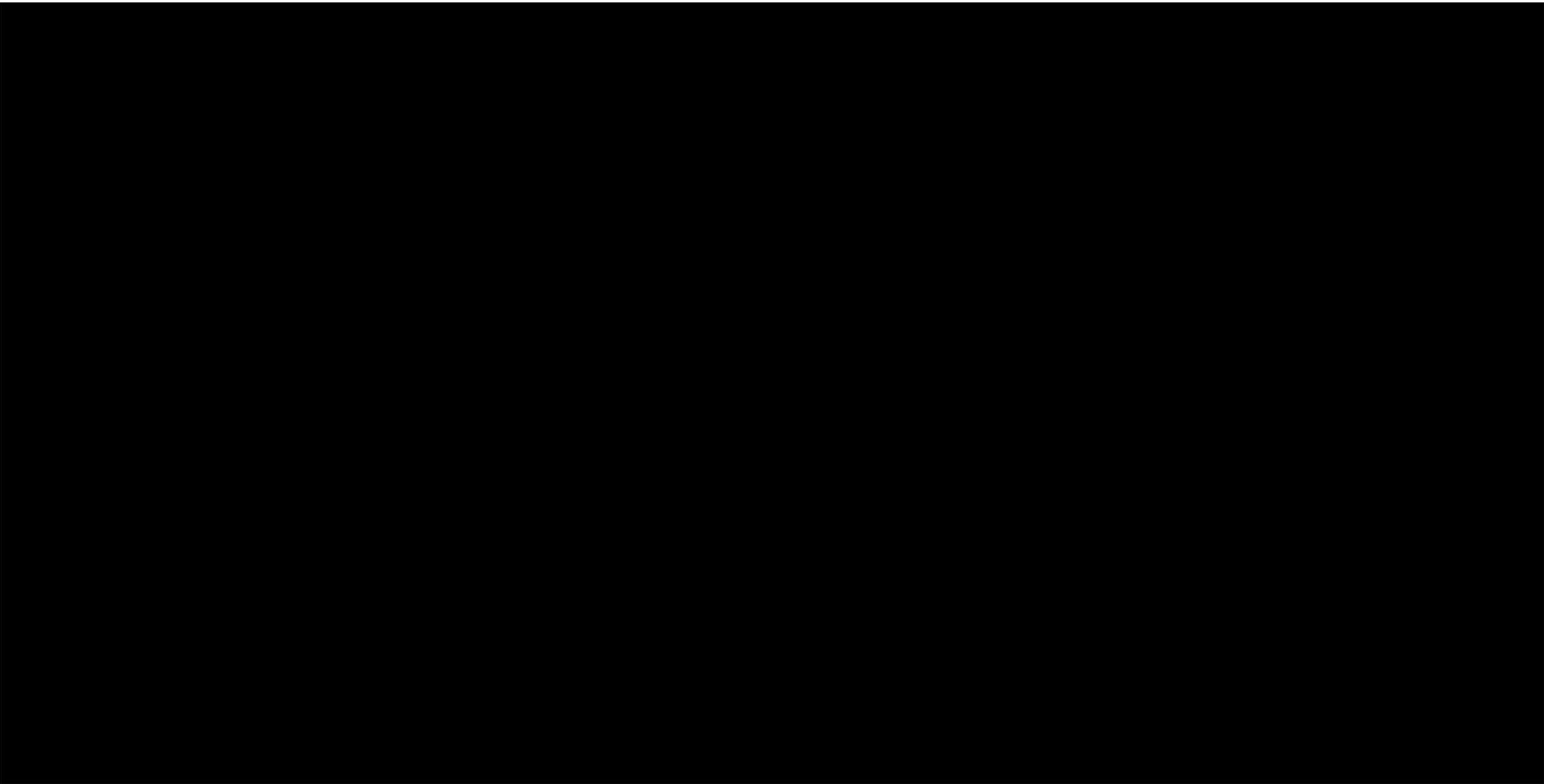
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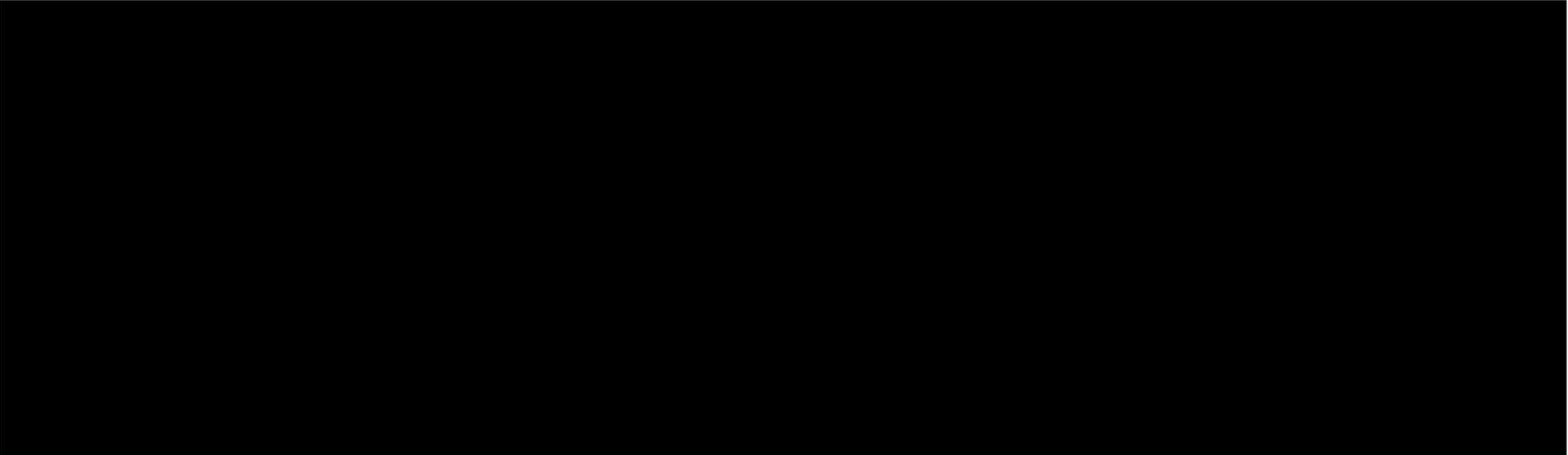
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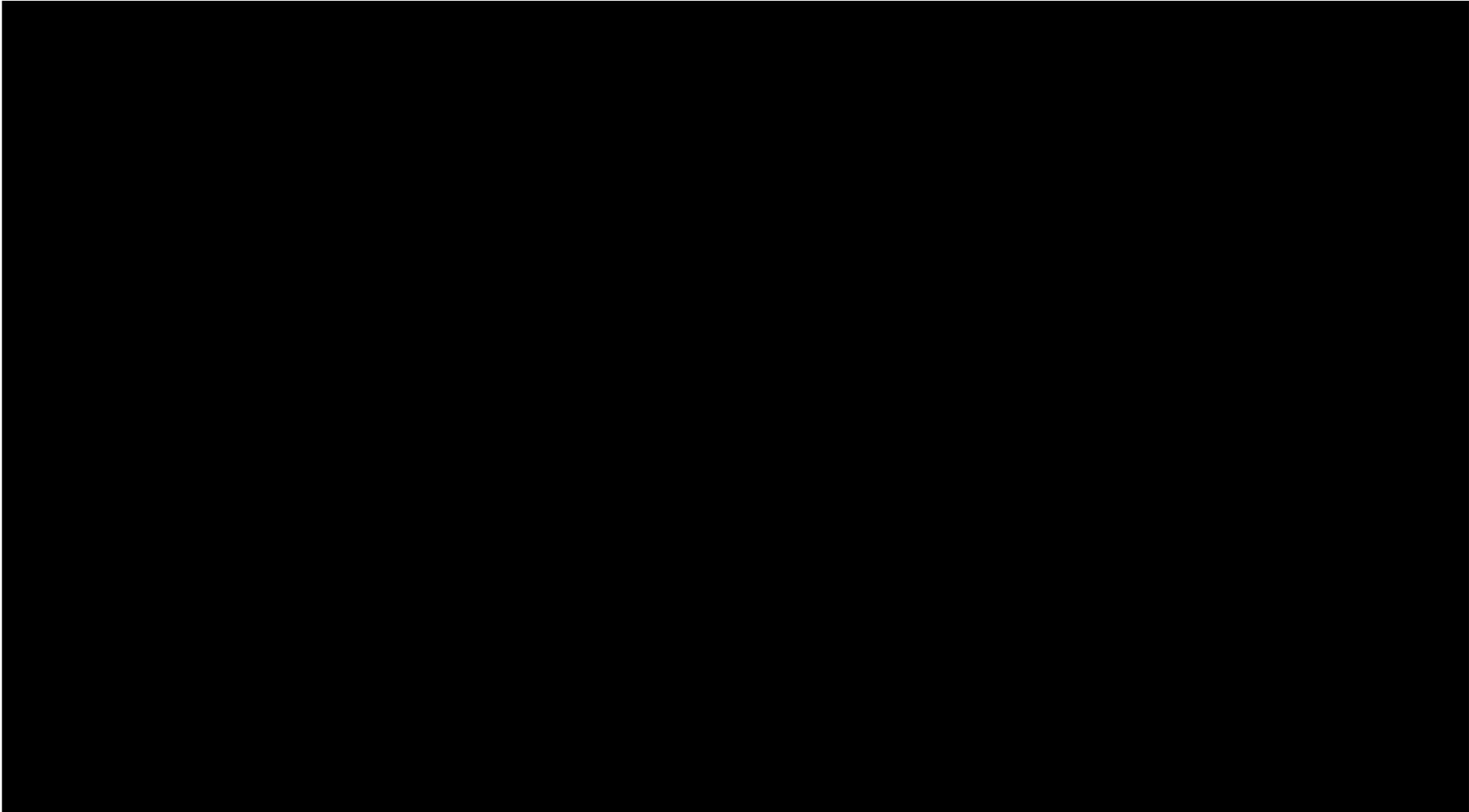


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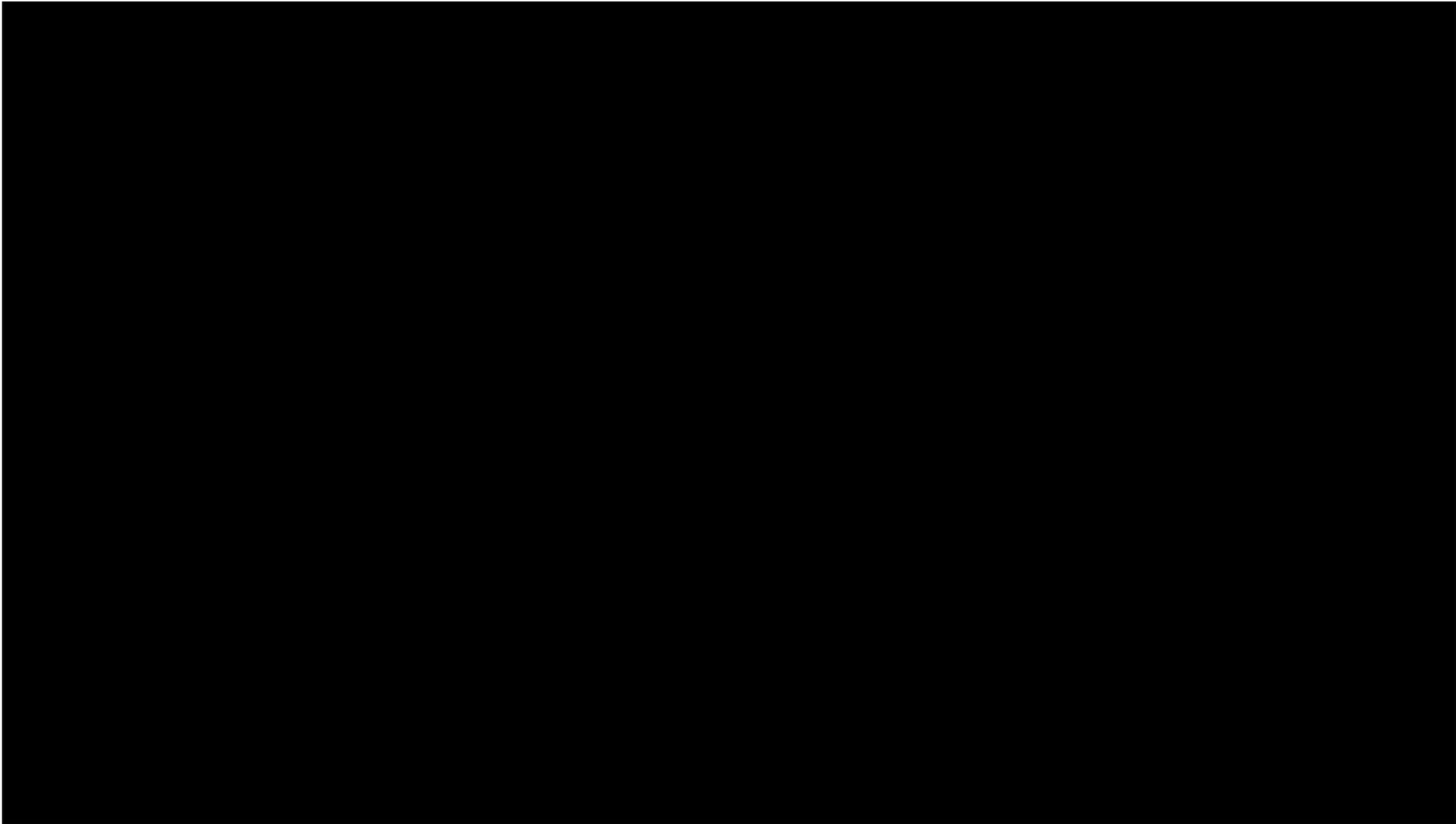




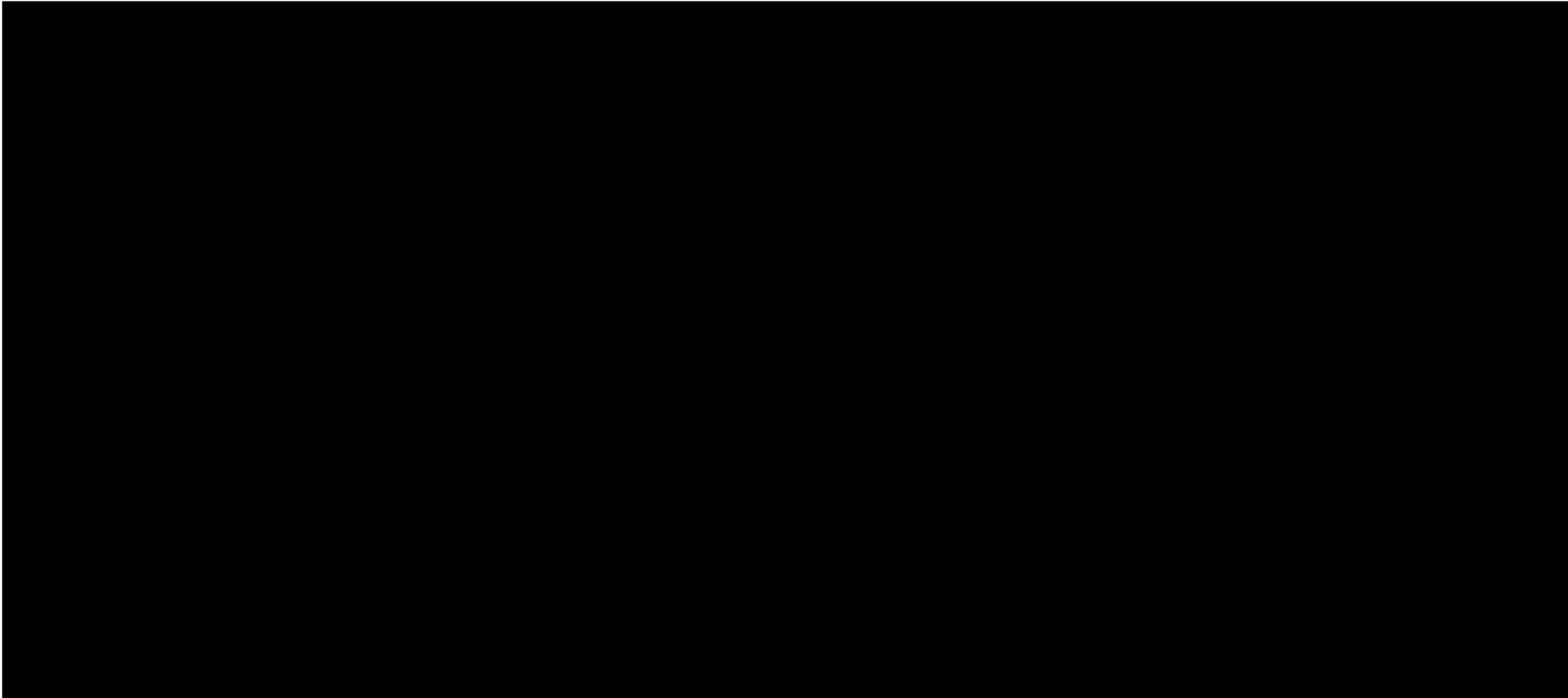
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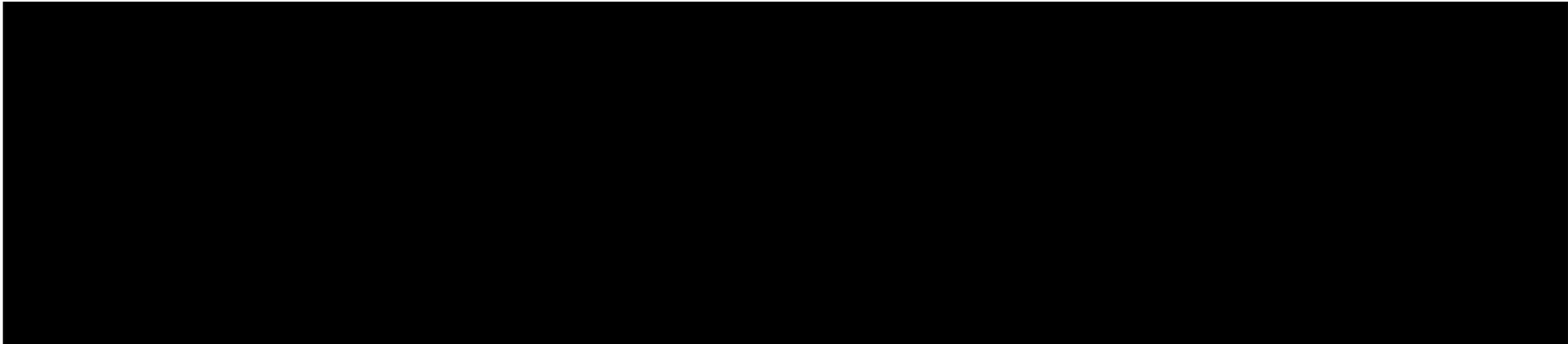






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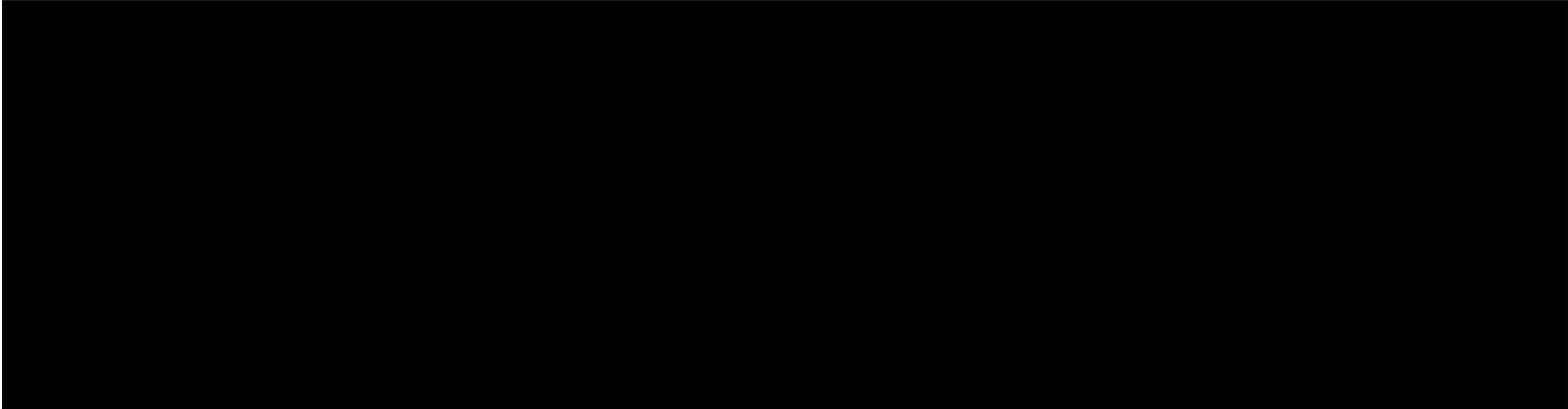


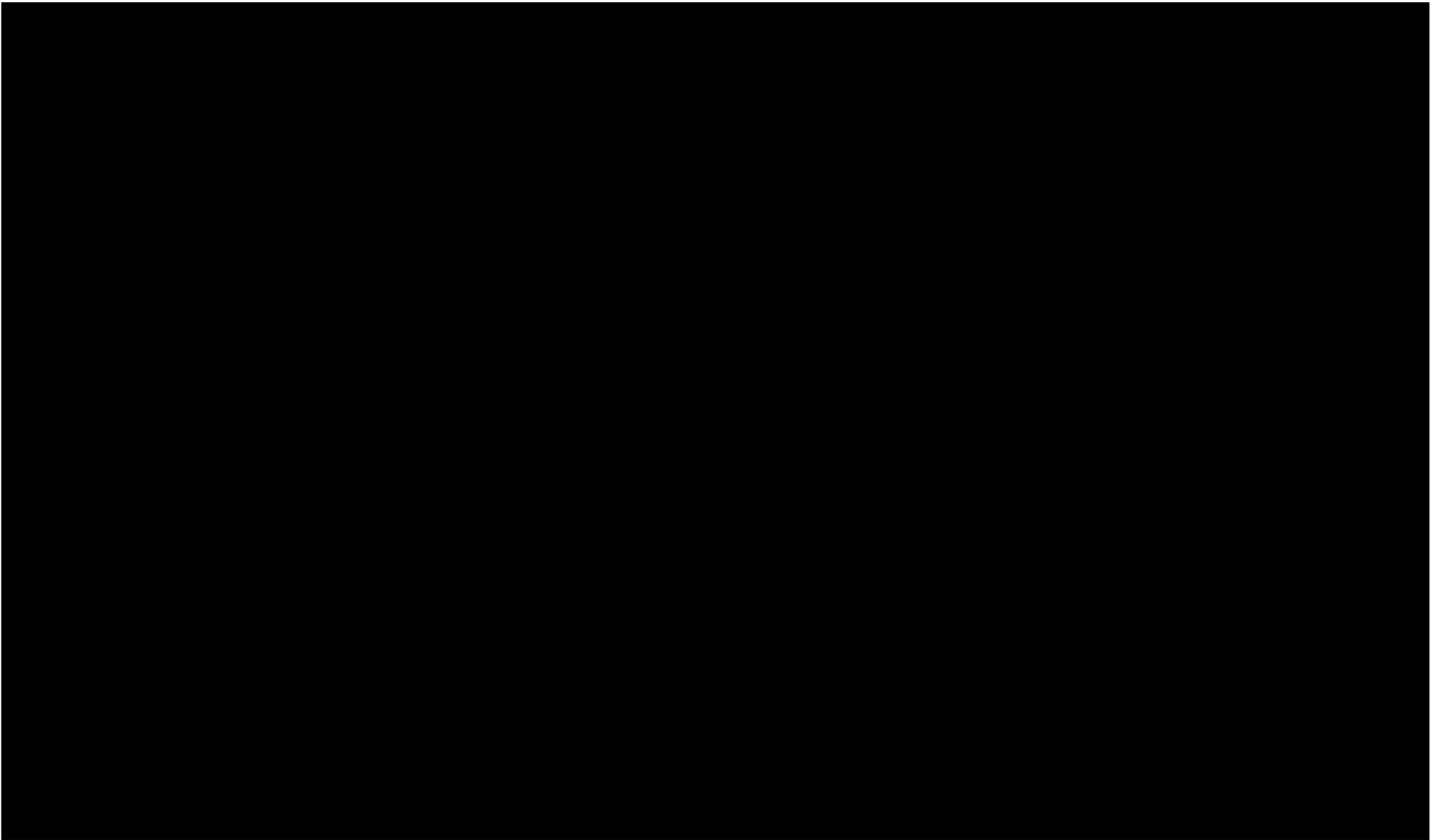


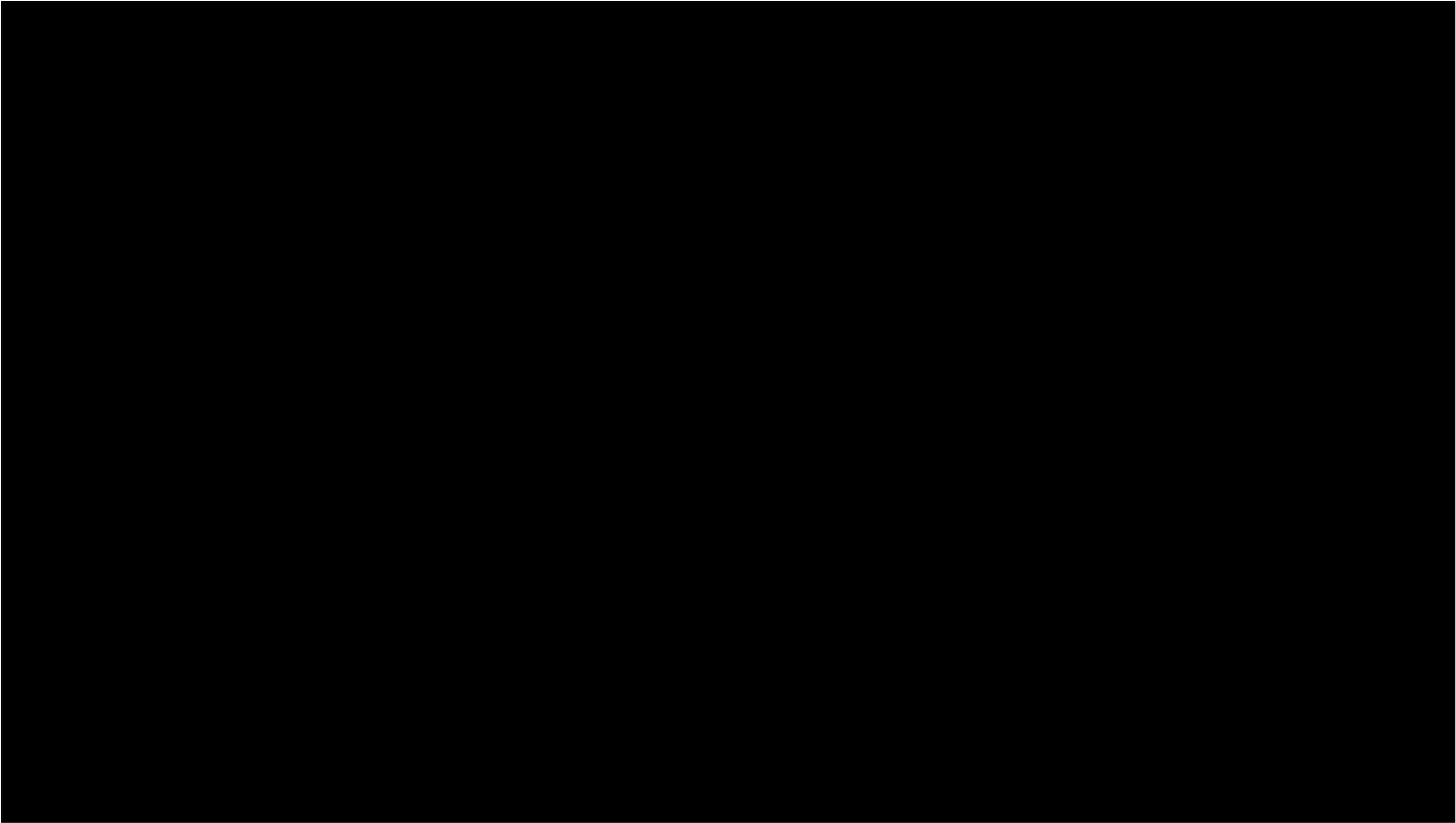
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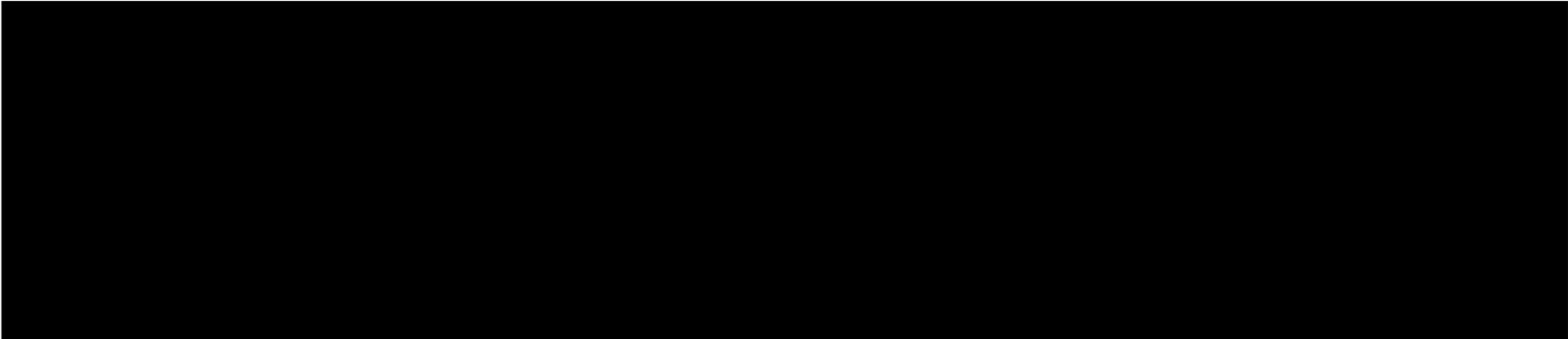


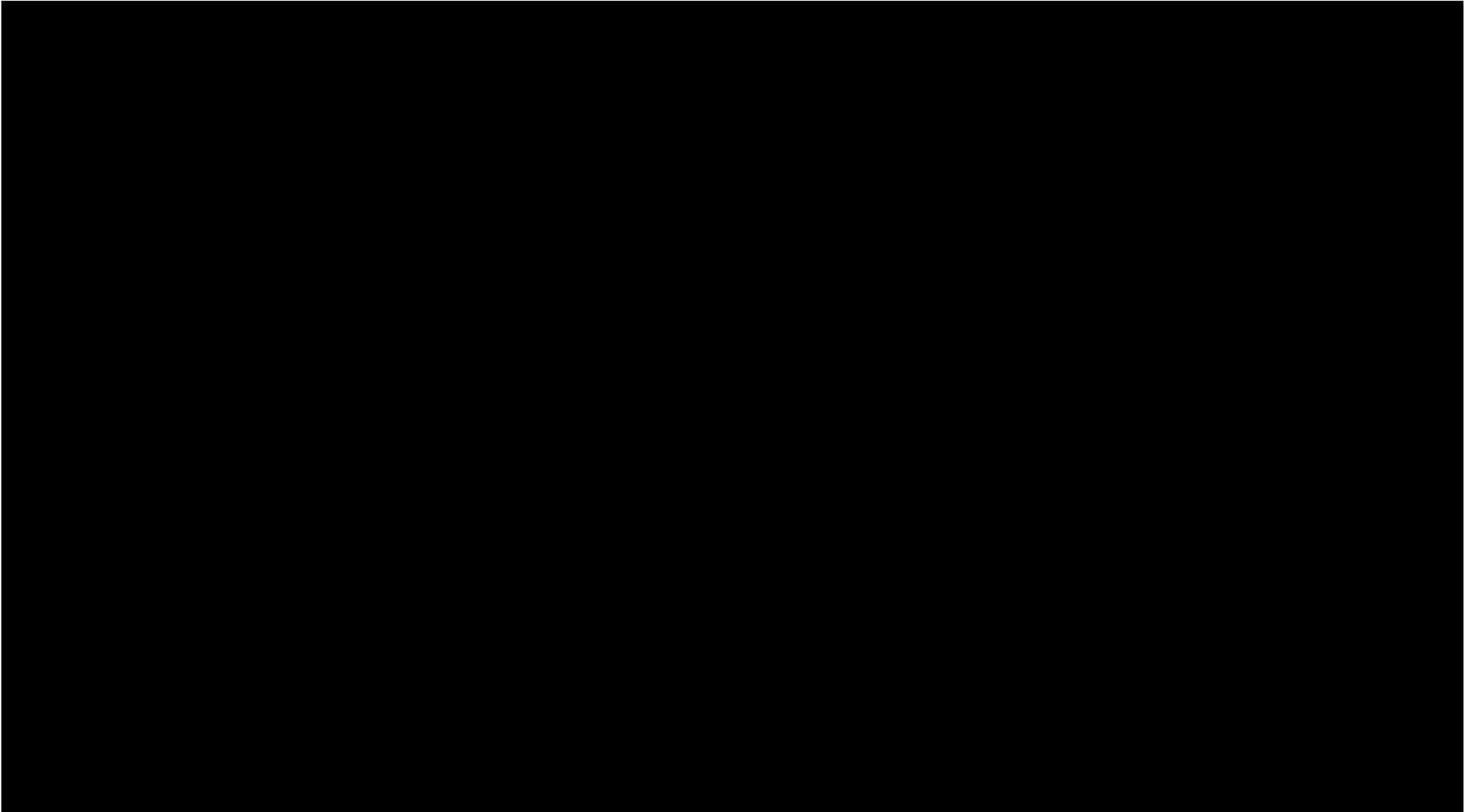


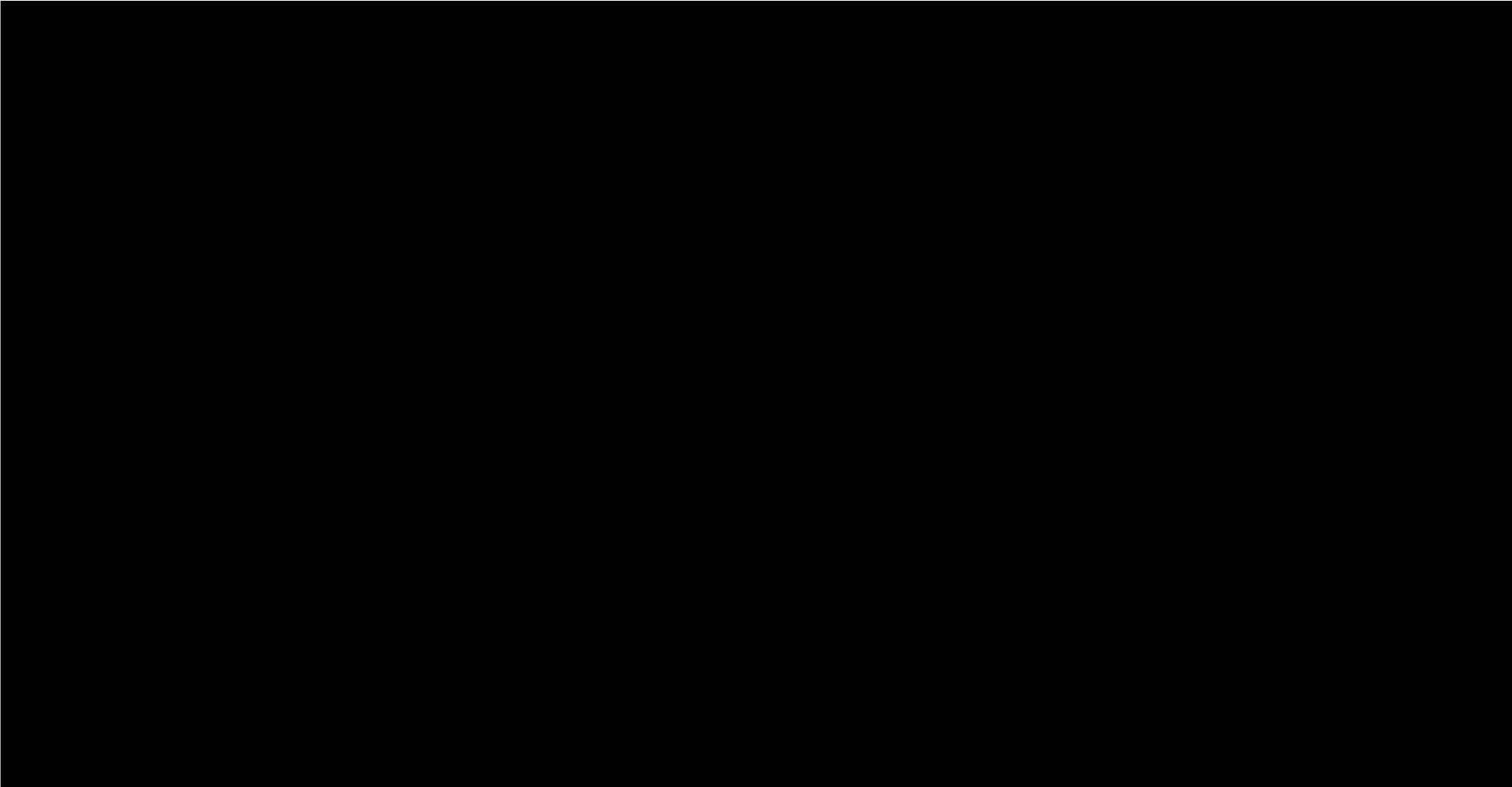




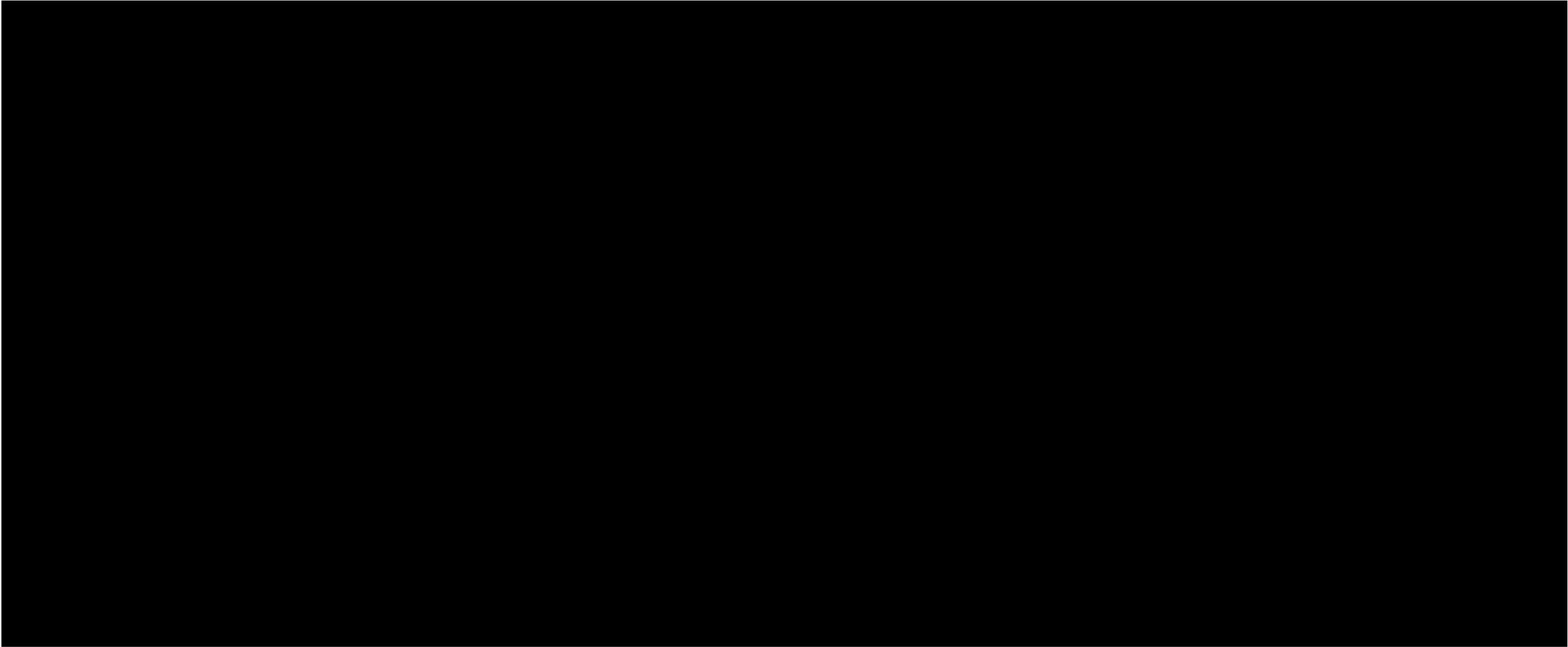








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# SCHEDULE 3 CHANGE CONTROL

## Contract Change Note (“CCN”)

<b>CCN Number</b>	
<b>Contract Reference Number &amp; Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

- The Original Contract shall be amended as set out in this Change Control Notice:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

- Save as amended all other terms of the Original Contract shall remain effective.
- This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

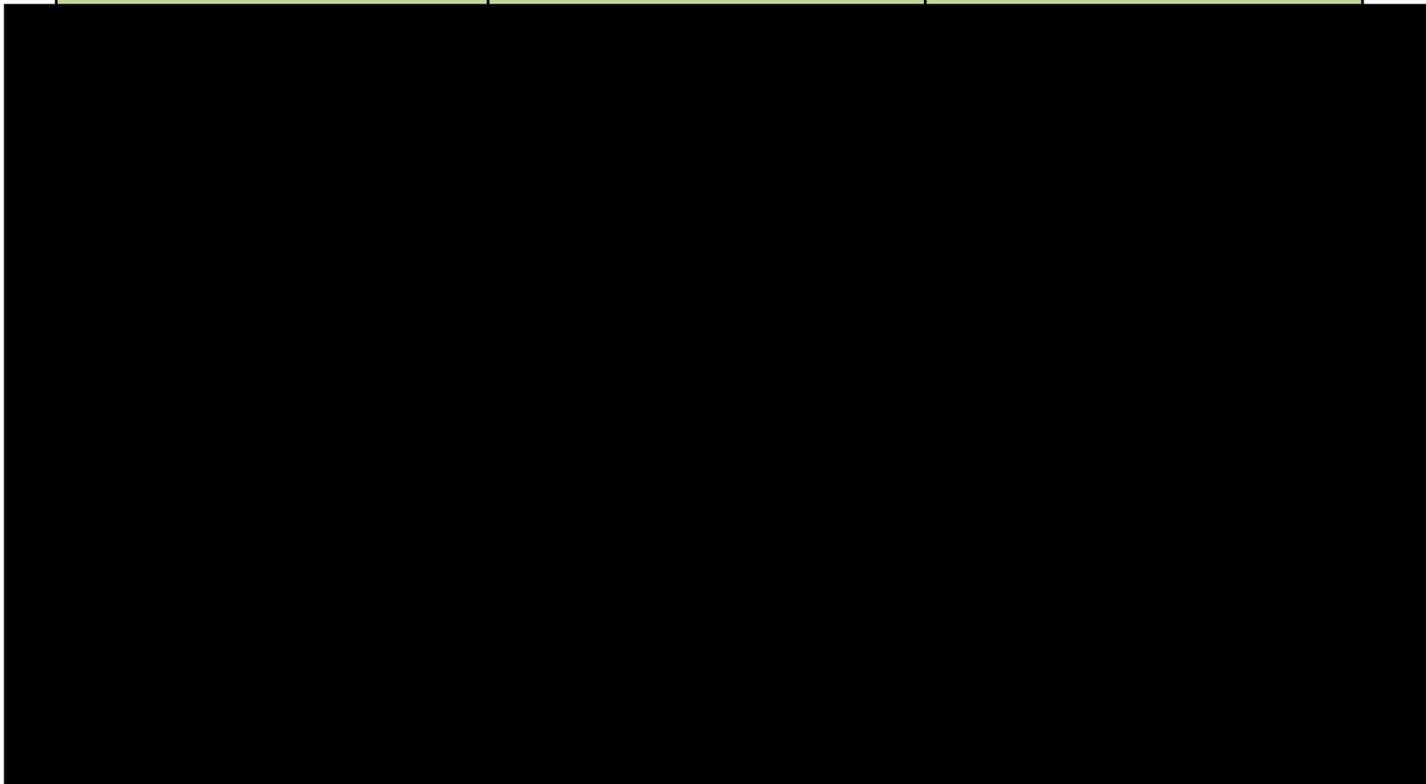
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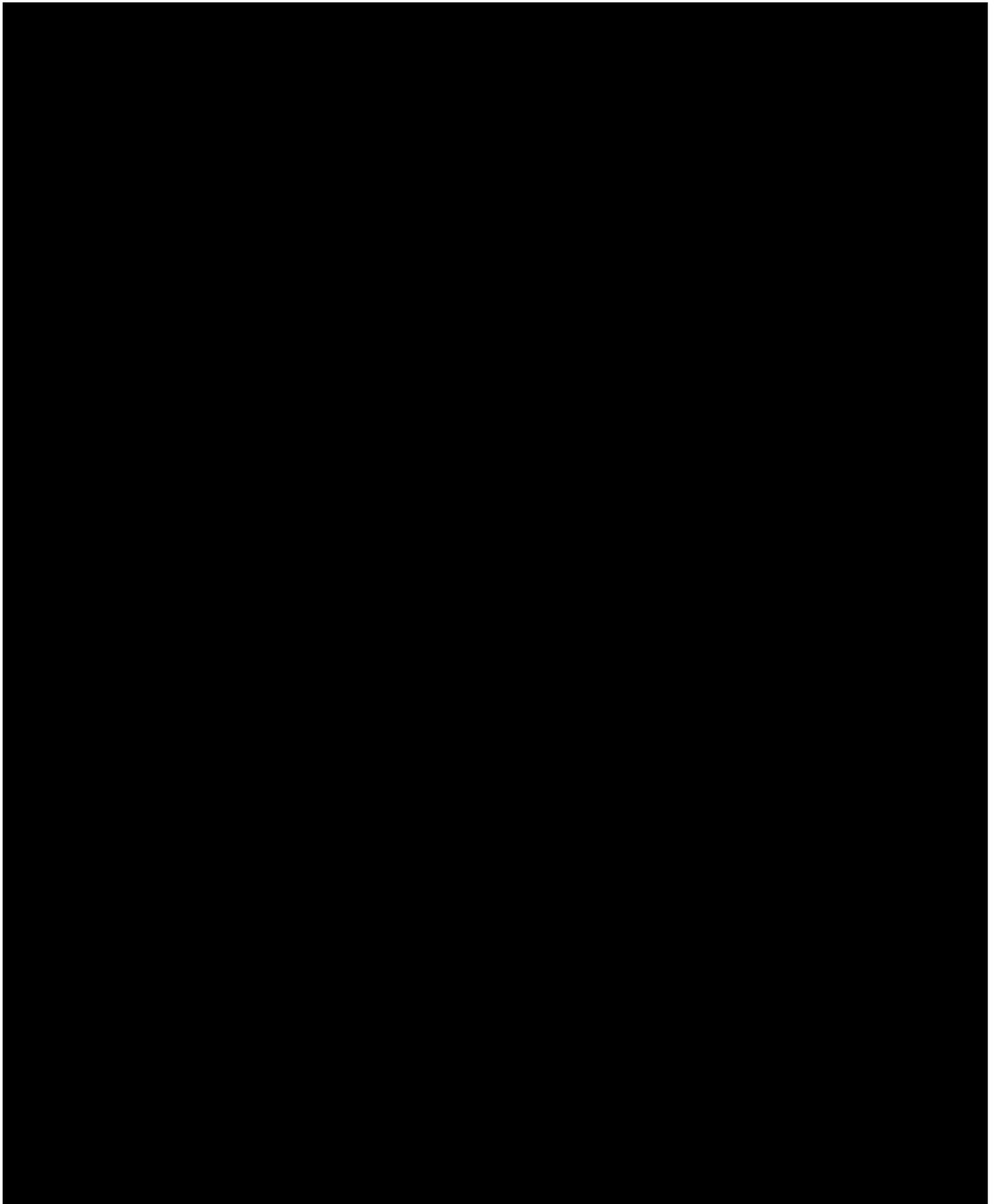
# SCHEDULE 4 COMMERCIALY SENSITIVE INFORMATION

## Bureau Veritas UK Ltd

- 1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

TENDERER'S COMMERCIALY SENSITIVE INFORMATION	POTENTIAL IMPLICATION OF DISCLOSURE	DURATION OF COMMERCIALY SENSITIVE INFORMATION
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## SCHEDULE 5 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are:  
  
dgc.gdpr@defra.gsi.gov.uk, Nobel House, 17 Smith Square, London SW1P 3JR
3. The contact details of the Contractor Data Protection Officer are:



4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1.
Subject matter of the processing	The processing is needed to ensure the Processor can collect detailed information on Local Authority air quality management.
Duration of the processing	The processing will take place from the 10 <sup>th</sup> June 2019 - 09 <sup>th</sup> June 2023, with an optional extension of two years. All information will be stored, processed and transferred securely.

<p>Nature and purposes of the processing</p>	<p>For the fulfilment of our contractual requirements, the following details are held and managed centrally by Bureau Veritas in order to fulfil our day to day service operations:</p> <p>The Report Submission Website (RSW - <a href="https://laqm.defra.gov.uk/1rsw2/index.php">https://laqm.defra.gov.uk/1rsw2/index.php</a>) provides a mechanism for the collection, recording, structuring, storage, retrieval and erasure of details associated with user accounts. This information is used to administrate user accounts, e.g. allow access to the RSW with associated privileges and reset passwords. The RSW system also uses this information to send automated emails to registered users in relation to the LAQM regime and associated reporting and AQMA submission/appraisal/approval processes.</p> <p>The Diffusion Tube Data Entry System (DTDES - <a href="https://laqm.defra.gov.uk/dtDES/login.html">https://laqm.defra.gov.uk/dtDES/login.html</a>) provides a mechanism for the collection and storage of details associated with user accounts. This information is used to administrate user accounts, e.g. allow access to the DTDES with associated privileges and reset passwords.</p> <p>The LAQM Helpdesk provides for an email and telephone based service whereby users submit enquiries in relation to LAQM based statutory obligations. In order to provide this service effectively, it is necessary to record relevant details in an Excel based log. Details are collected, recorded, stored, retrieved and queried through this system for the purposes of service provision and contract reporting.</p> <p>Upon request, the details included within the above databases are exported to file and queried to provide the Department with various analytical and statistical information associated with the LAQM regime.</p> <p>Additionally, the information from the databases is also used to send communications in relation to updates on the LAQM regime. This is achieved by migrating the relevant information to a dedicated web communications platform (MailChimp).</p>
<p>Type of Personal Data</p>	<p>The following personal data is of relevance to the above processing:</p> <ul style="list-style-type: none"> <li>• Name (first name and surname)</li> <li>• Role (if applicable)</li> <li>• Address (work and/or personal)</li> <li>• Telephone Number (work and/or personal)</li> <li>• Email Address (work and/or personal)</li> </ul>

<p>Categories of Data Subject</p>	<p>The following categories are applicable:</p> <ul style="list-style-type: none"> <li>• Defra and Contractor personnel</li> <li>• Other Government bodies, including those associated with the Devolved Administrations and GLA</li> <li>• Local authorities</li> <li>• Members of the public</li> <li>• Academic institutes</li> <li>• Students</li> <li>• Users of the LAQM website (<a href="https://laqm.defra.gov.uk/">https://laqm.defra.gov.uk/</a>)</li> </ul>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Details will be held for the period in which Bureau Veritas hold the contract and will be removed from our databases upon completion of our contractual requirements.</p> <p>Policies for return and destruction of the data is detailed via the following link:  <a href="https://laqm.defra.gov.uk/laqm/privacy-rsw-dtdes.html">https://laqm.defra.gov.uk/laqm/privacy-rsw-dtdes.html</a></p>

# SCHEDULE 6 - NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the "Commencement Date")

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is situated at [ ] (the "Contractor");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor ] (the "Disclosee").

(each a "Party" and together the "Parties").

WHEREAS:

- (a) The Contractor has contracted with the Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide services to the Authority in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

## Definition and Interpretation

1. In this Agreement:

- a) "Confidential Information" means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price

lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679), whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) "Law" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

## **CONFIDENTIALITY**

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the services under the Contract without the prior written permission of the Authority.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute

and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.

11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
  - 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
  - 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
  - 14.3 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
  - 14.4 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Disclosee shall: notify the Contractor and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.

18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

## **GENERAL**

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or noncompliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:

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SIGNED by the Disclosee:

# SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE

## CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “**Contractor Software**” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

Software	Supplier (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

## THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, “**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7. The Third Party Software shall consist of the following items:

Third Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

# SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN

## INTERPRETATION AND DEFINITION

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Breach of Security”** means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

**“Contractor Equipment”** means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 7.

**“ICT”** means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

**“Protectively Marked”** shall have the meaning as set out in the Security Policy Framework.

**“Security Plan”** means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 8.

**“Software”** means Specially Written Software, Contractor Software and Third Party Software.

**“Specially Written Software”** means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 7.

## 1. INTRODUCTION

This Schedule 8 covers:

- 1.1 principles of security for the Contractor System, derived from the Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;
- 1.3 the creation of the Security Plan;
- 1.4 audit and testing of the Security Plan; and

1.5 breaches of security.

## **2. PRINCIPLES OF SECURITY**

2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.

2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:

2.2.1 is in accordance with Good Industry Practice and Law;

2.2.2 complies with Security Policy Framework; and

2.2.3 meets any specific security threats to the Contractor System.

2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):

2.3.1 loss of integrity of Authority Data;

2.3.2 loss of confidentiality of Authority Data;

2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;

2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;

2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and

2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

## **3. SECURITY PLAN**

3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.

3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.

3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.

3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval.

The Parties will use all reasonable endeavors to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause I2 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.

3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

3.5.1 the provisions of this Schedule 8;

3.5.2 the provisions of Schedule 1 relating to security;

3.5.3 the Information Assurance Standards;

3.5.4 the data protection compliance guidance produced by the Authority;

3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;

3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and

3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.

3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 8.

#### **4. AMENDMENT AND REVISION**

4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

- 4.1.1 emerging changes in Good Industry Practice;
- 4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
- 4.1.3 any new perceived or changed threats to the Contractor System;
- 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
- 4.1.5 a reasonable request by the Authority.

4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

## **5. AUDIT AND TESTING**

5.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.

5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.

5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

## **6. BREACH OF SECURITY**

- 6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
- 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
  - 6.2.2 prevent an equivalent breach in the future.
- 6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 3.
- 6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

## **APPENDIX 1- OUTLINE SECURITY PLAN**

## **APPENDIX 2 - SECURITY POLICY: SECURITY POLICY FRAMEWORK**

A copy of the Security Policy Framework may be found at:

<https://www.gov.uk/government/publications/security-policy-framework>

# **SCHEDULE 9 - CONTRACTOR'S TENDER (E02-E08)**

Enclosed via the e tendering portal Bravo.