



Environment  
Agency

# Conditions of Contract Services

Document Version: October 2019

**33267 FCERM Supplementary Appraisal  
Guidance: Valuing our Natural and Historical  
Environment**

Contract Ref: [REDACTED]

## 1. DEFINITIONS

1.1. In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.1. Agency

The Environment Agency, its successors and assigns.

1.1.2. Agency Property

All property issued or made available for use by the Agency to the Contractor in connection with the Contract.

1.1.3. The Appendix

The Appendix to these Conditions.

1.1.4. The Contract

These Conditions including the Appendix, any Special Conditions, Specification, Pricing Schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.

1.1.5. The Contractor

The person, firm company or body who undertakes to supply the Services to the Agency as defined in the Contract.

1.1.6. Contract Period

The time period stated in the Appendix or otherwise provided in the Contract, for the performance of the Services.

1.1.7. Contractor Personnel

means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under this Contract

1.1.8. Contract Price

The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the services.

1.1.9. Contract Supervisor

Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.10. Contracting Authority

means any contracting authorities (other than the Environment Agency) as defined in regulation 2 of the Public Contract Regulations 2015 (SI 2015/102) (as amended).

1.1.11. Data Protection Legislation

means: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) or GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) ("LED") and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 ("DPA 1998") and/or the Data Protection Act 2018 ("DPA 2018") to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy

#### 1.1.12.Data Protection Schedule

The Schedule attached to this Contract describing how the Parties will comply with the Data Protection Legislation.

#### 1.1.13.Intellectual Property Rights

All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

#### 1.1.14.Law

means any law, 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 with which the Contractor is bound to comply

#### 1.1.15.Notice

Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

- i. fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery;

First class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.

#### 1.1.16.Results

All things produced in performing the Services including maps, plans, photographs, drawings, tapes, statistical data, experimental results, field data, analysis of results, published and unpublished results and reports, inventions, computer programmes and user documentation.

#### 1.1.17.The Resulting Rights

All Intellectual Property Rights in the Results that are originated, conceived, written or made by the Contractor, whether alone or with others in the performance of the Services or otherwise resulting from the Contract.

#### 1.1.18.Permission

Express permission given in writing before the act being permitted.

#### 1.1.19.Services

All Services detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor.

#### 1.1.20.Regulations

Means the Public Contract Regulations 2015 (SI 2015/102) as amended.

1.2. Except as set out above and in the Data Protection Schedule, the Contract shall be interpreted in accordance with the Interpretation Act 1988.

1.3. All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4. Any reference in these Conditions to a statutory provision will include all subsequent modifications.

1.5. All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

## 2. PRECEDENCE

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

- Conditions of Contract including Appendix, Data Protection Schedule and any Special Conditions;
- Specification;
- Pricing Schedule;
- Drawings, maps or other diagrams.

## 3. CONTRACT SUPERVISOR

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about the Contract provided such instructions are reasonable and consistent with the nature, scope and value of the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from the Contract Supervisor that is not confirmed in writing within 7 working days.

## 4. THE SERVICES

4.1. The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using reasonable skill, care and diligence, and to the reasonable satisfaction of the Contract Supervisor.

4.2. The Contractor shall only employ in the execution and superintendence of the Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Contractor to remove any person employed in or about the Contract who is unsuitable, misconducts himself, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission of the Contract Supervisor.

## **5. ASSIGNMENT**

5.1. The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.

5.2. Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.

5.3. Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract.

## **6. CONTRACT PERIOD**

The Contractor shall perform the Services within the time stated in the Appendix, subject to any changes arising from Condition 10 (Variations,) and/or Condition 11 (Extensions of time.).

## **7. PROPERTY**

7.1. All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.

7.2. The Contractor shall keep all Agency Property in safe custody and good condition, set aside and clearly marked as the property of the Agency.

7.3. On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Agency or otherwise dispose of it as instructed by the Contract Supervisor.

## **8. MATERIALS**

8.1. The Contractor shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his suppliers and staff whilst on the Agency's premises.

8.2. The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

## **9. SECURITY**

9.1. The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Services, belonging to the Contractor, or Contractors staff, or sub-contractors whilst on Agency premises.

9.2. This Condition shall not prejudice the Agency's rights under Condition 15.

## **10. VARIATIONS**

10.1. The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Services to be supplied, by written order to the Contractor provided such variations are reasonable and consistent with the nature, scope and value of the Contract.

10.2. The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

10.3. Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.

10.4. The Contractor may also propose a variation to the Services but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.

10.5. No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract. The Agency may vary the Contract to comply with a change in English Law. Such a change will be effected by the Contract Supervisor notifying the Contractor in writing.

10.6. The Agency may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

10.6.1. any Contracting Authority; or

10.6.2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Agency; or

10.6.3. any private sector body which substantially performs the functions of the Agency, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

10.7. Any change in the legal status of the Agency such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Agency.

## **11. EXTENSIONS OF TIME**

11.1. Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:

11.1.1. in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time, as in his opinion is reasonable, having regard without limitation, to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

11.1.2. in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

11.2. No extension of time shall be granted where in the opinion of the Agency the Contractor has failed to use reasonable endeavours to avoid or reduce the cause and/or effects of the delay.

11.3. Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 13 and 14.

## **12. DEFAULT**

12.1. The Contractor shall be in default if he:

12.1.1. fails to perform the Contract with due skill, care, diligence and timeliness;

12.1.2. refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor;

12.1.3. is in breach of the Contract.

12.2. Where in the opinion of the Contract Supervisor, the Contractor is in default, the Contract Supervisor may serve a Notice giving at least five working days in which to remedy the default.

12.3. If the Contractor fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

## 13. TERMINATION

13.1. The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:

13.1.1. fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2.

13.1.2. becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.

'Termination under the Regulations'

13.2. The Agency may terminate the Contract on written Notice to the Contractor if:

13.2.1. the contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

13.2.2. 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; or

13.2.3. 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.

## **14. DETERMINATION**

14.1. Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).

14.2. The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

14.3. The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

## **15. INDEMNITY**

15.1. Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any legally enforceable and reasonably mitigated liability, loss, costs, expenses, claims or proceedings in respect of:

15.1.1. death or injury to any person;

15.1.2. loss or damage to any property excluding indirect and consequential loss;

15.1.3. infringement of third party Intellectual Property Rights which might arise as a direct consequence of the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.

15.2. This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff.

## **16. LIMIT OF CONTRACTOR'S LIABILITY**

16.1. The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:

16.1.1. the sum stated in the Appendix;

16.1.2. if no sum is stated, the Contract Price or five million pounds whichever is the greater.

## **17. INSURANCE**

17.1. The Contractor shall insure and maintain insurance against liabilities under Condition 15 (Indemnity) in the manner and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5M (five million pounds.)

17.2. If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.

17.3. The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

## **18. PREVENTION OF FRAUD AND CORRUPTION**

18.1. The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

18.2. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Contractor's staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Agency immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3. If the Contractor or the Contractor's staff engages in conduct prohibited by this clause 18 or commits fraud in relation to the Contract or any other contract with the Crown (including the Agency) the Agency may:

18.3.1. terminate the Contract and recover from the Contractor the amount of any loss suffered by the Agency resulting from the termination, including the cost reasonably incurred by the Agency of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Agency throughout the remainder of the Contract; or

18.3.2. recover in full from the Contractor any other loss sustained by the Agency in consequence of any breach of this clause.

18.4. The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Bribery Act 2010 (as amended), in any of its dealings with the Agency.

## **19. MONITORING AND AUDIT**

19.1. The Contract Supervisor may inspect and examine the Services being carried out on the Agency's premises, or elsewhere at any reasonable time. Where the Services are being performed on other than the Agency's premises, reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

## **20. CONTRACT PRICE**

20.1. The Contract Price will be paid by the Agency to the Contractor as amended by any Variations ordered under Condition 10 (Variations).

20.2. In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

## **21. INVOICING AND PAYMENT**

21.1. Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.

21.2. If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.

21.3. If the Contractor enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due from it to the sub-contractor within 30 days from the receipt of a valid invoice.

## **22. INTELLECTUAL PROPERTY RIGHTS**

22.1. All Prior Rights used in connection with the Services shall remain the property of the party introducing them. Details of each party's Prior Rights are set out in the Prior Right Schedule to this contract.

22.2. All Results shall be the property of the Agency.

22.3. The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it

so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.

Unless otherwise agreed in writing between the Contractor and the Agency, the Contractor hereby:

22.3.1. assigns to the Agency all Resulting Rights

22.3.2. grants the Agency a non-exclusive, non-transferable (save for the purposes of sub-licensing, reorganisation or transfer to a successor body, for the purposes of all the successor body's normal business use), irrevocable, royalty free perpetual licence to the Agency in respect of all the Contractor's Prior Rights necessary in order for the Agency to use or exploit the Resulting Rights.

22.4. The Contractor undertakes to the Agency not to use, exploit or deal with any of the Agency's Prior Rights, other than in the performance of the Contract unless the Contractor has first obtained a written licence from the Agency, in specific terms to do so.

22.5. The Agency undertakes to the Contractor not to use or exploit the Contractor's Prior Rights, save as provided in Condition 22.3.2.

22.6. The Contractor warrants to the Agency that the performance of the Services, the Contractor's Prior Rights and the Results shall not in any way infringe any intellectual property rights of any third party.

22.7. If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 13 and 14, Termination and Determination respectively.

22.8. The Contractor shall not be liable if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.

22.9. The Contractor waives in favour of the Agency its rights to object to derogatory treatment of the Results of the Work and the Contractor also agrees that he will not assert or seek to enforce against the Agency and/or any other person, firm or company any of its moral rights as defined in the Copyright Designs and Patents Act 1988 (as amended) without the prior agreement of the Agency.

22.10. The Contractor shall not be liable for any consequential losses, damage or injuries arising from third party misuse of the Results, of which the Contractor is not aware.

## **23. WARRANTY**

The Contractor warrants that the Services supplied by him will be discharged with reasonable skill, care and diligence.

## **24. STATUTORY REQUIREMENTS**

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

## **25. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY**

25.1. The Contractor in the performance of this Contract should adopt a sound proactive environmental approach, designed to minimise harm to the environment, to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of single-use plastic, ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and/or the environment, and be able to provide proof of so doing to the Agency on demand.

25.2. The Agency is committed to ensuring that workers employed within its supply chains are treated fairly, humanely and equitably. The Agency expects the Contractor to share this commitment and to understand any areas of risk associated with this and work to ensure they are meeting International Labour Standards. The Contractor ensures that it and its sub-contractors and its supply chain:

25.2.1. comply with the provisions of the Modern Slavery Act 2015;

25.2.2. pay staff fair wages (and pays its staff in the UK not less than the Foundation Living Wage Rate ); and

25.2.3. Implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance.

25.3. The Contractor should support the Agency to achieve its Public Sector Equality Duty by complying with the Agency's policies (as amended from time to time) on Equality, Diversity and Inclusion (EDI). This includes ensuring that the Contractor (and their sub-contractors) in the delivery of its obligations under this Contract:

25.3.1. eliminates discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

25.3.2. advances equality of opportunity between people who share a protected characteristic and those who do not; and

25.3.3. fosters good relations between people who share a protected characteristic and those who do not.

## **25. PUBLICITY**

The Contractor shall not advertise or publicly announce that he is supplying Services or undertaking work for the Agency without the Permission of the Contract Supervisor.

## **26. LAW**

This Contract shall be governed and construed in accordance with the Law, and subject to the jurisdiction of the courts of England.

## **27. WAIVER**

27.1. No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.

27.2. No waiver by the Agency shall be effective unless made in writing.

27.3. No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

## **28. ENFORCEABILITY AND SURVIVORSHIP**

28.1. If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

28.2. The following clauses shall survive termination of the Contract, howsoever caused: 13, 14, 15, 22, 23, 24, 27, 29, 30, 31, 32 and 33.

## **29. DISPUTE RESOLUTION**

29.1. All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.

29.2. If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).

29.3. If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.

29.4. Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.

29.5. If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.

29.6. The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.

29.7. Any of the time limits in Conditions 30 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

## **30. GENERAL**

30.1. Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.

30.2. The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

## **31. FREEDOM OF INFORMATION ACT**

31.1. The Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 (as amended) ('Act') and the Environmental Information Regulations 2004 (as amended) (Regulations').

31.2. The Contractor agrees that:



31.2.1. All information submitted to the Agency may need to be disclosed by the Agency in response to a request under the Act or the Regulations; and

31.2.2. The Agency may include information submitted (in whole or in part) in the publication scheme which it maintains under the Act or publish the Contract, including from time to time agreed changes to the Contract, to the public.

31.3. If the Contractor considers that any of the information included in its tender, or that it has submitted to the Agency or that is otherwise contained in the Contract, is commercially sensitive, it shall identify and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. The Contractor acknowledges that if it has indicated that information is commercially sensitive, such information may still be required to be disclosed by the Agency under the Act or the Regulations. The receipt of any material marked 'confidential' or equivalent by the Agency shall not be deemed to infer that the Agency agrees any duty of confidentiality by virtue of that marking.

## **32. DATA PROTECTION**

32.1. In the event that the Contract requires data to be processed within the meaning of the Data Protection Legislation the Data Protection Schedule shall be completed by the Parties and provisions and definitions therein shall apply and bind the Parties as part of this Contract.

## **33. RETENDERING AND HANDOVER**

33.1 Within 21 days of being requested by the Agency, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Agency to issue tender documents for the future provision of the Services.

33.2 The Agency shall take all necessary precautions to ensure that the information referred to in clause 33.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

33.3 The Agency 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 Agency; and that they shall not use it for any other purpose.

33.4 The Contractor shall indemnify the Agency against any claim made against the Agency at any time by any person in respect of any liability incurred by the Agency arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause 33.1.



33.5 The Contractor shall allow access to their premises in the presence of the Contract Supervisor, to any person representing any potential provider whom the Agency has selected to tender for the future provision of the Services.

33.6 If access is required to the Contractor's premises for the purposes of clause 33.5, the Agency 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.

33.7 The Contractor shall co-operate fully with the Agency 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.

33.8 Within 10 Working Days of being requested by the Agency, the Contractor shall transfer to the Agency, or any person designated by the Agency, 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 Agency.

## **34 EXIT MANAGEMENT**

34.1 Upon termination the Contractor shall render reasonable assistance to the Agency to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause 35.

## **35 EXIT PROCEDURES**

35.1 Where the Agency 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 Agency 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.

35.2 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.

35.3 When requested to do so by the Agency, the Contractor shall deliver to the Agency details of all licences for software used in the provision of the Services including the software licence agreements.

35.4 Within one Month of receiving the software licence information described above, the Agency shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Agency a plan for licence transfer.

## **36 KNOWLEDGE RETENTION**

36.1 The Contractor shall co-operate fully with the Agency in order to enable an efficient and detailed knowledge transfer from the Contractor to the Agency 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 Agency 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 Agency. The Contractor shall comply with the Agency's request for information no later than 15 Working Days from the date that that request was made.

## Appendix to Conditions Services

Ref: [REDACTED]

Title: FCERM Supplementary Appraisal Guidance: Valuing our Natural and Historical Environment

		Condition
1	Contract Supervisor	3

Contact Supervisor: [REDACTED]

Address:

Environment Agency  
Horizon House, Deanery Road, Bristol  
BS1 5TL

2	Contractor
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Economics for the Environment Consultancy Ltd

Address:

[REDACTED]

3	Completion	6
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Contract Start Date 23-08-2021

Contract End Date 10-01-2022

4	Delivery	11
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Address:-

Insert delivery address if different to above

5	Insurance	17
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Professional Indemnity Min. Cover £1 million

Third Party Minimum Cover £1 million

Public Liability Min. Cover £1 million

6	Limit on Liability	16
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Limit on Contractors Liability £2 million

# SCHEDULE 1 – SPECIFICATION

## FCERM SUPPLEMENTARY APPRAISAL GUIDANCE: VALUING OUR NATURAL AND HISTORICAL ENVIRONMENT

### FULL BRIEF AND REQUIREMENTS FOR CONSULTANTS

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#### AIM

To improve the inclusion of impacts on our natural and historic environments in FCERM (Flood & Coastal Erosion Risk Management) Economic Appraisals, leading to more consistent and better decisions which can be assured efficiently.

#### BACKGROUND

This section outlines the recent context for economic valuation of environmental outcomes in FCERM. Annex 2 provides additional background and relevant context in support of this project.

The existing guidance on how to value the natural and historic environment in the economic appraisal of FCERM projects is increasingly out of date. Since it was published in 2010, the policy context, valuation methodologies, and evidence base have changed and we require updated guidance and supporting documents to ensure that FCERM project appraisal can accurately and robustly include the impacts on our natural and historic environments.

In July 2020, the Department for the Environment, Food and Rural Affairs published a Policy Statement setting out the Government's long-term ambition to create a nation more resilient to future flood and coastal erosion risk so as to reduce harm to people, the environment and the economy<sup>1</sup>.

Five policy areas will drive this ambition:

- Upgrading and expanding our national flood defences and infrastructure
- Managing the flow of water more effectively
- Harnessing the power of nature to reduce risk and achieve multiple objectives
- Better preparing our communities
- Enabling more resilient places through a catchment based approach.

These policies will be delivered through the implementation of the Environment Agency's National Flood and Coastal Erosion Risk Management Strategy<sup>2</sup> (2020).

A key part of this national strategy is the six year, £5.2 billion Flood and Coastal Erosion Risk Management (FCERM) capital programme managed by the Environment Agency. These monies are allocated to individual projects based on the policy outcomes they deliver as evidenced through their Business Case. The Business Case comprises:

- The Strategic Case
- **Economic Case**
- Commercial Case
- Financial Case
- Management Case

When building the Economic Case, practitioners must follow guidance set out by HM Treasury<sup>3</sup> and the Environment Agency<sup>4</sup>. The full suite of FCERM Appraisal Guidance (FCERM-AG) and supplementary guidance is currently being reviewed<sup>5</sup>.

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<sup>1</sup> [Defra Flood and coastal erosion risk management Policy Statement, July 2020](#)

<sup>2</sup> [Environment Agency's National Flood and Coastal Erosion Risk Management Strategy for England, 2020](#)

<sup>3</sup> [HM Treasury Green Book and accompanying guidance and documents](#)

<sup>4</sup> [FCERM Appraisal Guidance](#)

<sup>5</sup> EA National FCERM Strategy, Strategic Objective 1.1: Measure 1.1.1: By 2021 the Environment Agency will enhance the appraisal guidance for flooding and coastal change projects so that investment decisions can better reflect a wider range of resilience actions and climate change scenarios.

As part of this review, the Environment Agency is reviewing existing guidance on how to **value** the natural and historic environment in economic appraisals. The existing FCERM guidance on valuing outcomes relating to the natural and historic environment is mainly captured in:

- The Multi-Coloured Manual<sup>6</sup> (MCM); and,
- The Economic Valuation of Environmental Effects (EVEE) (Eftec, 2010).

The MCM mainly outlines generic economic methods for valuing environmental outcomes. The EVEE publication promotes some relevant transfer values for FCERM schemes. Although still very relevant in terms of methodology, EVEE does not reflect the full range of ecosystem services and habitats that are impacted by FCERM schemes: e.g. air quality (ecosystem services), riparian woodlands (habitats), etc. Neither of these documents fully reflect the advances in thinking about the natural and historical environment using a natural capital approach as promoted by Defra's Enabling a Natural Capital Approach<sup>7</sup>, published in 2020.

## KEY OUTPUTS

The key output for this work is:

- Updated guidance on how to value impacts to the natural and historic environment in the economic appraisal of publicly funded FCERM projects, fit for .gov.uk.

This should encompass:

- A shortlist of methods, valuation databases, and available tools that are best suited for the purposes of the guidance, including full detailed review of methods, valuation databases, and available tools explaining the underpinning evidence for the supplementary guidance.

These outputs are needed to ensure that environmental and social impacts are included in economic appraisal in a way that addresses the developments detailed above (**and in Annex 2**) and does so in a way that uses resources proportionately and efficiently.

## OUTCOME SPECIFICATION

This project will deliver supplementary guidance on how to value our natural and historic environment in the economic appraisal of FCERM schemes.

ENCA (Defra's Enabling a Natural Capital Approach) will provide the overarching framework for environmental valuation. However, ENCA offers many references for each environmental impact. We need a shortened list of valuations for impacts appropriate to FCERM, so that practitioners can more effectively identify appropriate values for their appraisals, leading to great consistency across the capital programme.

The guidance will have to:

- Apply HM Treasury guidance as presented in the Green Book (2020) and accompanying documents, with specific reference to how the 4-step process in Box 23 can be adopted by practitioners.
- Be sympathetic to the FCERM Appraisal Process, with a diagram demonstrating how the valuation process aligns with other appraisal stages/processes, including the relationship with SEA/EIA.
- Explain to the practitioner why we need to value the natural and historic environment and how this can be done in the absence of markets to determine a price.

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<sup>6</sup> Flood Hazard Research Centre, 2013, Flood and Coastal Erosion Risk Management: A Manual for Economic Appraisal, often referred to as the Multi-Coloured Manual (MCM).

<sup>7</sup> [Defra, Enabling a Natural Capital Approach, 2020](#)

- Explain which impact categories should be considered for the natural and historic environment, e.g. impact on air quality, carbon sequestration, recreation, angling, etc. (see **ANNEX III** for supporting literature that should be referred to as a minimum). This will require consultation with the project team.
- Explain what baseline should be used for valuing the impacts to the natural and historical environment. This will require consultation with the project team.
- Develop an approach that is **proportional**, reflecting a need for different levels of accuracy at Strategic Outline Case, Outline Business Case and Full Business Case<sup>8</sup>.
- Develop guidance that can be applied to a wide range of typical FCERM projects (see **ANNEX III** for supporting literature that identify different FCERM project types).
- Endorse specific valuation studies/tools in ENCA which can be used to value the natural and historic environment in FCERM schemes. The endorsed values should preferably be calculated in £/year so that it is possible to use the values to calculate present value benefits/costs over the study time horizon.
- Clearly state where there are no readily available values in ENCA for impact categories and the level of risk this presents to delivering Defra Policy and Environment Agency national FCERM Strategy objectives. If these gaps can be filled by studies available outside ENCA then they should be identified.
- Provide instruction for applying benefit transfer in the particular context of FCERM schemes.
- Demonstrate the application of approach, e.g. through example case studies (the Environment Agency will provide up to 4 projects that are at Outline Business Case stage).
- Include a full detailed review of methods, valuation databases, and available tools explaining the underpinning evidence for the supplementary guidance.
- Include a shortlist of methods, valuation databases, and available tools

This work will have to:

- Be delivered in partnership with key stakeholders (FCERM practitioners, economists, assurers)
- Adhere to Environment Agency style guide

## MINIMUM PRODUCTS

1. **Project management:** Project Plan, Risk register, minutes of key meetings etc.
2. **Supplementary Guidance on how to value natural and historical environment — No later than 20<sup>th</sup> December, 2021.**

Stand-alone supplementary guidance document to be published on .gov.uk. This guidance should be written in accordance with Environment Agency style guide (the successful supplier will be provided with more information on style and branding). This guidance will detail the methodology for valuing natural and historical impacts in FCERM economic appraisal (SOC/OBC/FBC). The document should be 10 to 20 pages, with technical appendices as necessary.

- a) This output should include a recommendation for how and when to update the endorsed methods, values, and tools.
- b) Guidance on the use of methods, values, and tools should explicitly consider proportionality between the valuation effort and scale of the project.

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<sup>8</sup> [Business Case Guidance for Projects](#)

## TIMESCALES

The contract will start in August, 2021. The deadline for the completed project will be 20<sup>th</sup> December, 2021.

Draft outputs will be required for this work. For example, the structure of the supplementary guidance will need sign-off before content is written. Draft outputs will be agreed upon between the EA and the successful supplier.

## MEETINGS & GOVERNANCE

The EA project team will meet regularly with the successful supplier. The EA project manager will be available for weekly or fortnightly catch-ups over MS teams. Meetings can be arranged on an ad hoc basis as needed.

## ANNEX 1: CONTRACT REQUIREMENTS

- The winning Contractor shall be responsible for delivering the commissioned research under this contract, under the Terms and Conditions and against each tasking's unique set of requirements.
- The winning Contractor shall ensure that they can fully meet their contractual obligations within the Performance, Cost and Time envelope of each tasking.
- The winning Contractor shall be committed throughout the Contract duration to identify and deliver efficiencies where possible and practical. All efficiencies identified through this Contract shall be reported to and flowed down to the EA.

## ANNEX 2: FURTHER BACKGROUND AND RELEVANT DEVELOPMENTS

- New legislation, policy and strategies
  - Britain's withdrawal from the European Union: for example, any reference to EU legislation (e.g. Water Framework Directive) will need to be updated.
  - The new Environment Bill
  - Defra Policy on Biodiversity Net Gain
  - UK Government's 25 Year Environment Plan (2018)
  - Defra's new FCERM Policy Statement (2020)
  - The Environment Agency's national FCERM Strategy (2020)
  - The Environment Agency's new Partnership Funding Calculator
  - The Environment Agency's Sustainability Action Plan, eMission 2030 (with targets for net zero carbon, 20% biodiversity net gain, reduction in waste and contributing to a just and fair society).
- New Appraisal Methodologies
  - An updated HM Treasury Green Book (2020)
  - An updated HM Treasury Magenta Book (2020)
  - Defra's Enabling a Natural Capital Approach (ENCA) (2020)
  - (In development ) Environment Agency Carbon Emissions Appraisal Guidance
- New valuation studies/databases:
  - **ENCA services/assets databooks:** produced by Defra, these excel based "databooks" summarise the methods and studies endorsed by Defra to capture the value of

natural capital. For ease of navigation there are two databooks, one captures valuation studies by habitat type (assets) and one by ecosystem service category.

- **Ecosystem Services Valuation Database (ESVD):** This excel based database is a 2020 update of The Economics of Ecosystems and Biodiversity (TEEB). Part funded by Defra the database is a catalogue of valuation studies, systematically categorised by ecosystem service categories using two internationally recognised categorisation systems.
- **The Benefit Inventory (Benin):** This is an Excel-based database completed in 2017 by the Environment Agency. It captures many valuation studies relevant to the appraisal of FCERM schemes.

There is no signposting to specific valuation tools in the existing appraisal guidance. Since the publication of the FCERM-AG (2010), there has been a proliferation of online and spreadsheet tools to calculate the cost/benefit of environmental outcomes. Some of these have been funded by Defra and the Environment Agency. They are increasingly promoted through webinars as well as in the 25 Year Environment Plan. Area teams within the Environment Agency as well as our framework consultants are aware that these tools are available and are using them as a way of delivering integrated outcomes and partnership funding. These include, but are not limited to:

- **BEST:** This is an excel-based tool developed by CIRIA, part-funded by Defra and the Environment Agency's Flooding and Communities R&D Programme. It covers all categories relevant for undertaking an integrated economic assessment of natural flood management and sustainable urban drainage schemes. It is currently in further development as a web-based tool.
- **OrVAL:** This is a map based online tool developed by Exeter University under the direction of Professor Ian Bateman. It calculates the change in social welfare resulting from changes in outdoor recreation opportunities. It uses Natural England's Monitor of Engagement with the Natural Environment (MENE) data to quantify number of users and a travel cost method to value the benefits of recreational activity.
- **NEVO:** This is an online tool developed by Exeter University that builds on OrVAL by taking a map based approach to valuing a number of different ecosystem services delivered by natural capital.
- **Greenkeeper:** This is a map based online tool developed by Frontier Economics that is similar to NEVO in that it tries to capture the benefits of the natural capital delivered at a given location by looking at the ecosystem service provision.
- **Numerous other tools including:** Health Economics Assessment Tool for Cycling and Walking (HEAT), i-Tree, Local Environment and Economic Toolkit (LEET), Forestry Commission Woodland Valuation Tool.

### ANNEX 3: SUPPORTING LITERATURE

- Enabling a Natural Capital Approach (ENCA), Defra Guidance and supporting materials, 2020
- Environment Agency, FCRM Ecosystem Services Pilot Study, National Environmental Assessment Services (NEAS), 2014
- Environment Agency and Natural Environment Research Council, Ecosystem Services and Flood and Coastal Erosion Risk Management, 2013.
- Environment Agency, Survey of FCERM appraisal practitioners – assessment of environmental and social impacts, (to be completed March 2021).
- Environment Agency, Value environmental improvements that deliver environmental benefits and outcome measure 4 (OM4), 2020



- Jacobs, Local Natural Capital Plan (LNCP) Independent Review Final Report, 2020. Available online at <https://www.oxcamlncp.org/defining-our-approach#page-section-5e85e9994331a53f3837c350>

## **PERFORMANCE MEASURES**

Performance will be continually monitored and discussed throughout the lifetime of the Contract, during the required meetings outlined in the scope. Bidders are invited to provide a clear metric for performance measurement, which the Agency will adopt to monitor quality and progress.

## **KEY PERSONNEL**

The key personnel are those individuals named in the Contractors proposal who will be working on the project for its duration. Any changes or alterations to Key Personnel should be only be made with prior agreement from the EA.

## SCHEDULE 2 – PRICE

The price for consideration of the provision of the Services outlined in this Contract is £69,950.00

### Resource and Pricing Schedule

[illegible]

## PRICING AND PAYMENT MECHANISM

The Contract is agreed on a fixed price principle, with the pricing schedule (schedule 2) outlining the key personnel required to deliver each element of the work described in the specification, their cost per hour and the number of hours they will be contributing.

Payment will be made on successful delivery of agreed milestones, as submitted during the tender period, with subsequent agreement from the Agency.

This is subject to the winning bidder's proposed programme and methodology for delivering the work.

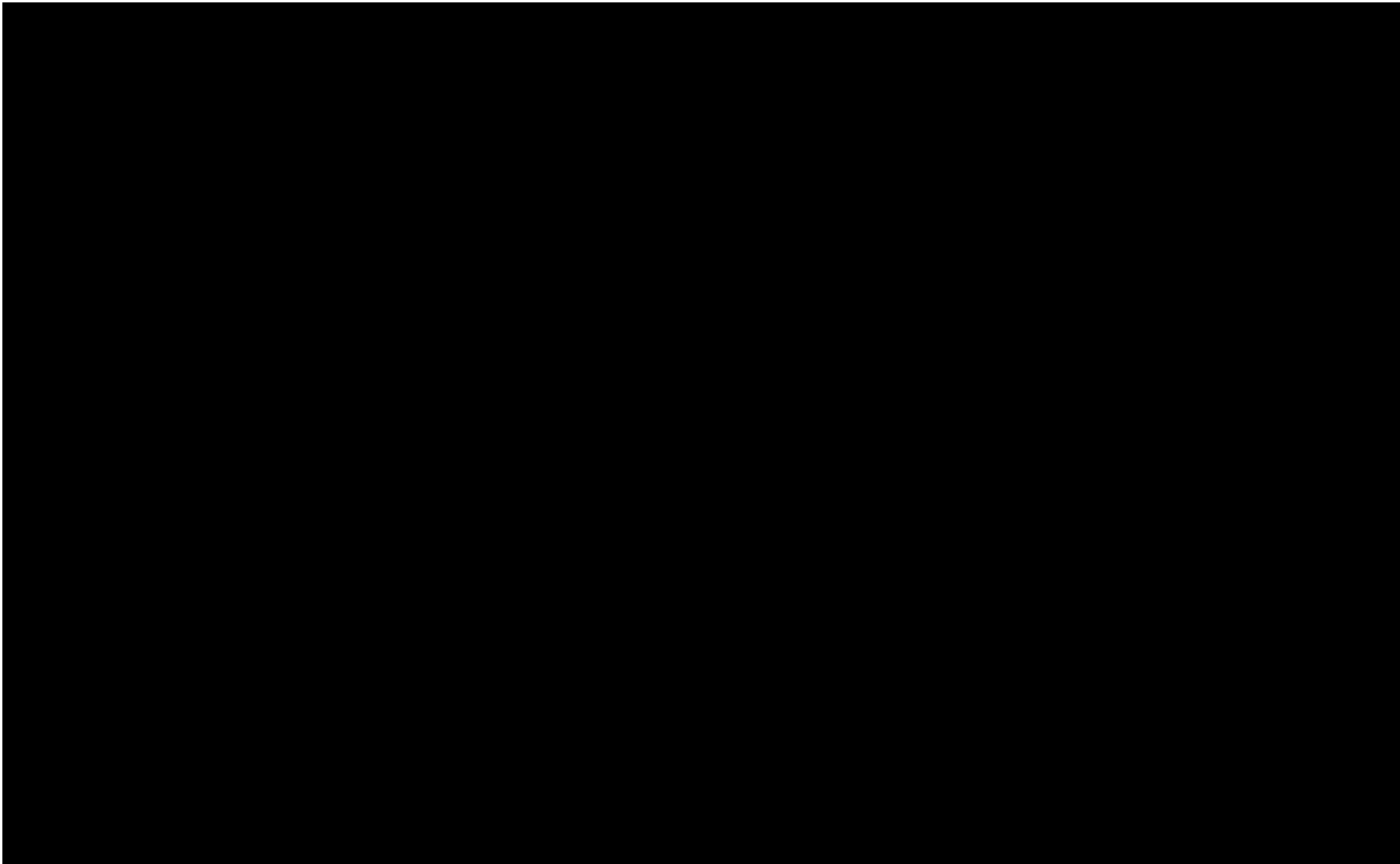
The Environment Agency stipulates that this project must be completed within a 5 month period.

[illegible]

### Payment Schedule

Financial Year	Payment Due Date	Deliverable	Contract price
████	████	████████████████████	████
████	████	████████████████████	████
████	████	████████████████████	████
████	████	████████████████████	████
		████████████████████	████
		████████████████████	████

**Programme of works**





## SCHEDULE 3 – DATA PROTECTION

### **Definitions – the definitions in this Schedule and the Contract shall apply:**

**Annex 1:** the Schedule of Processing, Personal Data and Data Subjects attached to this Data Protection Schedule.

**Annex 2:** Joint Controller Agreement (where required).

**Party:** a Party to this Contract.

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

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer:** takes the meaning given in the GDPR.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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 Subject Request:** 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.

**Joint Controllers:** where two or more Controllers jointly determine the purposes and means of processing. **Protective Measures:** appropriate technical and organisational measures which may include: the use of pseudonyms 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 Annex 1 (Security).

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Processor related to this Contract.

### **1. DATA PROTECTION**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Contractor is the Processor unless otherwise specified in Annex 1. The only processing that the Processor is authorised to do is listed in Annex 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, 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.
- 1.4 The Processor 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 Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller 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 Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller 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 Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller 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 EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor 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 Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if 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 in connection with Personal Data processed under this Contract;
- (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.



- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller 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 Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller 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).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers as identified in Annex 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Annex 2 in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

#### **Annex 1 - Schedule of Processing, Personal Data and Data Subjects Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:

[DataProtection@environment-agency.gov.uk](mailto:DataProtection@environment-agency.gov.uk)

Horizon House, Deanery Road, Bristol BS1 5AH

2. The contact details of the Processor's Data Protection Officer are: [REDACTED]

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Annex 1.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Contractor is the Processor in accordance with Clause 1.1.
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i></p>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

## SCHEDULE 4 – CONTRACT CHANGE NOTE TEMPLATE

### Contract Change Note (“CCN”)

<b>CCN Number</b>	01
<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 (title of contract) dated (date) (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. 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	
	New Contract Value	
Revised Payment Schedule	No change to costing schedule.	
Revised Specification	The specification will change from that drafted in the original contract to the text drafted in the summary section above.	
Revised Contract Period		
Change in Contract Manager(s)	N/A no change to contract manager	
Other Changes	N/A no other changes	

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

Authorised Authority Representative

Name:

Date: 2020

Defra Commercial Officer  
(FSOD Sign off up to £500k)

Name .....

Date.....

Authorised Contractor Representative.....

Name.....

Date.....