

Conditions of Contract - Services

Ref: [REDACTED]

Title: East Shropshire Groundwater Modelling

Index

| | |
|--|--|
| 1. DEFINITIONS..... | |
| 2. PRECEDENCE..... | |
| 3. CONTRACT SUPERVISOR..... | |
| 4. THE SERVICES..... | |
| 5. ASSIGNMENT..... | |
| 6. CONTRACT PERIOD..... | |
| 7. PROPERTY..... | |
| 8. MATERIALS..... | |
| 9. SECURITY..... | |
| 10. VARIATIONS..... | |
| 11. EXTENSIONS OF TIME..... | |
| 12. DEFAULT..... | |
| 13. TERMINATION..... | |
| 14. DETERMINATION..... | |
| 15. INDEMNITY..... | |
| 16. LIMIT OF CONTRACTOR'S LIABILITY..... | |
| 17. INSURANCE..... | |
| 18. PREVENTION OF FRAUD AND CORRUPTION..... | |
| 19. MONITORING AND AUDIT..... | |
| 20. CONTRACT PRICE..... | |
| 21. INVOICING AND PAYMENT..... | |
| 22. INTELLECTUAL PROPERTY RIGHTS..... | |
| 23. WARRANTY..... | |
| 24. STATUTORY REQUIREMENTS..... | |
| 25. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY..... | |
| 26. PUBLICITY..... | |
| 27. LAW..... | |
| 28. WAIVER..... | |
| 29. ENFORCEABILITY AND SURVIVORSHIP..... | |
| 30. DISPUTE RESOLUTION..... | |
| 31. GENERAL..... | |
| 32. FREEDOM OF INFORMATION..... | |
| 33. DATA PROTECTION..... | |

All rights reserved. No part of this document may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder.

Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

© Environment Agency 2018

customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88

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. With the exception of EA derived data, 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. With the exception of EA derived data, 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

████████████████████

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

28.1. 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.

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

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

29. ENFORCEABILITY AND SURVIVORSHIP

29.1. 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.

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

30. DISPUTE RESOLUTION

30.1. 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.

30.2. 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).

30.3. 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.

30.4. 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.

30.5. 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.

30.6. 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.

30.7. 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.

31. GENERAL

31.1. 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.

31.2. 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.

32. FREEDOM OF INFORMATION ACT

32.1. 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').

32.2. The Contractor agrees that:

32.2.1. 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

32.2.2. 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.

32.3. 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.

33. DATA PROTECTION

33.1. 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.

Appendix to Conditions Services

Ref: [REDACTED]

Title: «East Shropshire Grounwater Modelling»

| | | Condition |
|----------|---|-----------|
| 1 | Contract Supervisor [REDACTED] Address:- [REDACTED] [REDACTED] [REDACTED] [REDACTED] | 3 |
| 2 | Contractor «Groundwater Science Ltd» [REDACTED] [REDACTED] [REDACTED] [REDACTED] | |
| 3 | Completion Contract Start Date « [REDACTED] » Contract End Date [REDACTED] | 6 |
| 4 | Delivery Address:- <i>As above</i> | 11 |
| 5 | Insurance Professional Indemnity Min. Cover [REDACTED] Third Party Minimum Cover [REDACTED] Public Liability Min. Cover [REDACTED] | 17 |
| 6 | Limit on Liability Limit on Contractors Liability [REDACTED] | 16 |

7. Specification

1 Introduction

The Environment Agency constructed a regional model of the East Shropshire Permo-Triassic Sandstone aquifer system over the period September 2001 to January 2005. The regional model consists of a runoff-recharge model encompassing the River Tern catchment and active areas of the groundwater model outside of this groundwater model of the East Shropshire Permo-Triassic Sandstone outcrop and the confined zone of the East Shropshire Permo-Triassic Sandstone with a buffer zone of approximately 1000 m. The combined area is referred as the East Shropshire Model (ESM) throughout this document.

In 2008 the ESM model was updated and extended to incorporate the Merrington Groundwater Management Unit (GWMU) to encompass Phases 3 and 5 of the Shropshire Groundwater Scheme (SGS).

Later in 2013 the ESM model time series data was updated to March 2013 and a new recharge model using the 4R code was developed and some refinement of the MODFLOW model was done due to minor changes to the recharge being applied. The resultant combined recharge and groundwater model simulates flows and groundwater levels at key target locations as well as the previous model and shows some marked improvements in some places.

The East Shropshire model is strategically important and has been used extensively for Catchment Abstraction Management Strategies (CAMS) and our Water Framework (WFD) investigations. The updated ESM model will be required for further investigations and appraisal work. It will support decision making in abstraction management strategy, meeting our obligations under the Water Framework Directive (No Deterioration and 'Pathway to Good' requirements) and supporting water companies to deliver their AMP7 programmes of work and Water Resource Management plans.

A key objective of the project is to extend the existing model boundary to include the Alberbury GWMU if technically feasible whilst not compromising calibration of the existing ESM model. Figure 1 shows the proposed area for the model boundary.

The current project has two main tasks:

- 1) To develop a conceptual model of the Alberbury GWMU including a detailed understanding of the water balance.
- 2) To produce a fully distributed numerical model to extend the boundary of the existing ESM model that meets our current standards for groundwater models and the stated objectives.

It should be noted that it is not intended to under this scope to convert the model code from 4R to 4R6 or MODFLOW96 to MODFLOW6.

2 Project

The project will be undertaken using a phased approach defined by the Tasks described in Section 4 of this specification. The following definitions are used throughout this document:

The project consists of 3 phases.

customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88

Project – This refers to the programme of work to update the East Shropshire Groundwater Model.

Task – This refers to a specific part of the Project. All the Tasks are listed in the Contents and described in detail in Section 4.0 of this specification.

Phase 1 – this phase consists of two tasks - primarily focusing on the development of the conceptual model of the Alberbury GWMU and producing a feasibility report on extending the existing ESM model boundary to include Alberbury GWMU and updating the existing ESM model

Phase 2 – it consists of two tasks – mainly focusing on development of new recharge-runoff and groundwater model of the Alberbury GWMU.

Phase 3 – there are three tasks in this phase- focusing on running standard and predictive scenarios and producing final reports

Constraints:

Following the completion of the Phase 1 (feasibility report), a review will take place to evaluate the technical feasibility of developing the Alberbury GWMU numerical model and extending the existing model boundary. The extension of the existing ESM model boundary to include Alberbury GWMU would only be undertaken if it can be achieved without affecting the calibration of the existing ESM Model. Therefore, the phase 2 of the project may not be undertaken and the project may proceed directly onto Phase 3.

Therefore, the Contractor is required to provide a detailed cost break down for both options;

- Phase 1 and Phase3 – include all tasks and sub tasks under Phase 1 and Phase 3.
- Phase 1, Phase 2 and Phase 3: include all tasks and sub tasks under Phase 1, 2 and 3.

Therefore, the project bid should clearly provide the cost for both options, i.e. the cost for with or without phase 2. Any bid that fails to provide the cost for both options will be excluded from further consideration of the tender process.

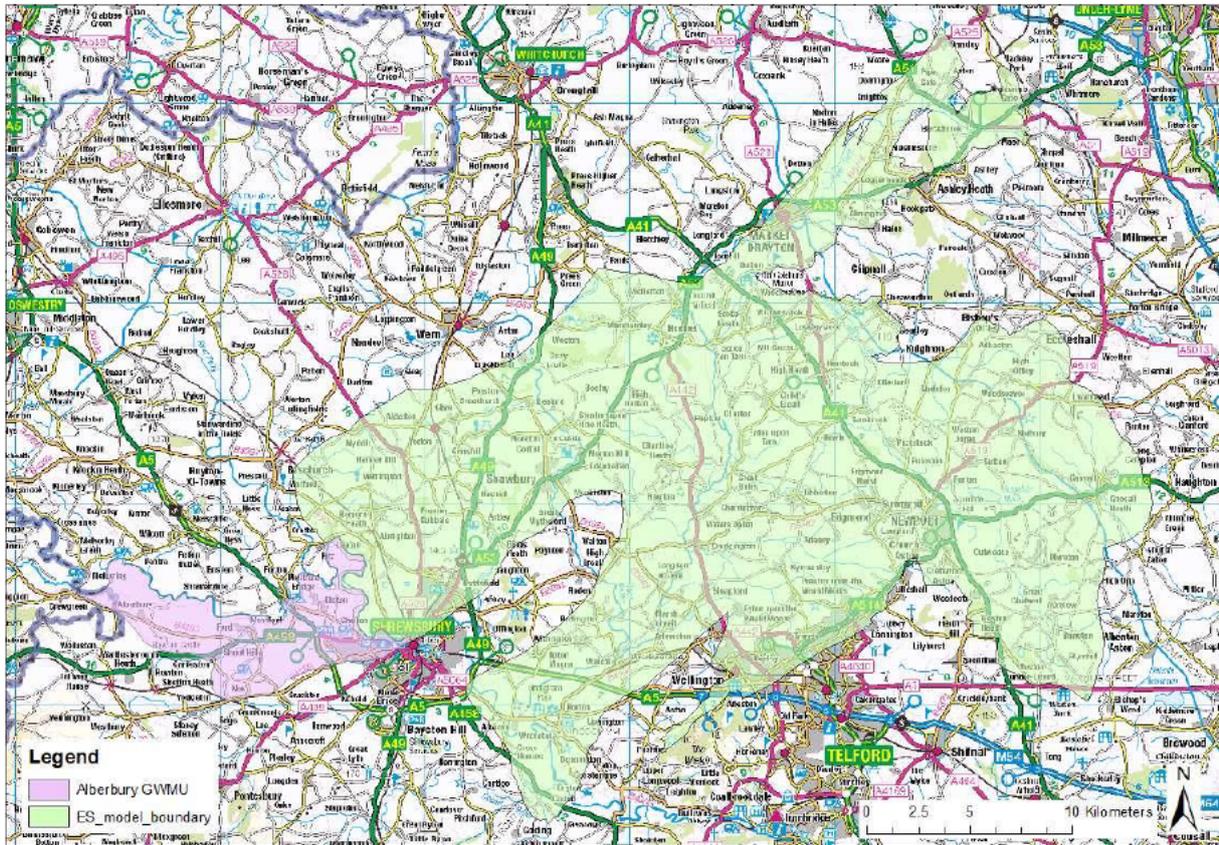


Figure 1 The East Shropshire Groundwater Model Area

3 Environment Agency Project Timescale

The Environment Agency Project timescale requires the work to be started at the start of May 2020. The main modeller and the project manager should be available for a start-up meeting during the first week of May 2020. Please be informed that the EA project manager will be on extended leave in August and this should be considered in workplan. Phase 1 of the project should be completed by the end of June to ensure that Phase 2 (if it goes ahead) work begins early July. It is anticipated that the project (Phase 1, Phase 2 and Phase 3) will be completed by end of December 2020.

Project Review

The Contractor will be expected to undertake the work as outlined in Section 4. To ensure that the work is completed to a sufficiently high standard, the work will be monitored by a small Project Review Team, which will consist of the following personnel:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- External Peer Reviewer contracted by the Environment Agency after completion of this tendering process

The principal Environment Agency contact for the Contractor will be the Environment Agency Project Manager, [REDACTED] and day to day project support will be provided by [REDACTED]

Project meetings will form the principal method of project review and the Contractor should produce formal minutes for approval by the Project Review Team within three working days of the meeting. Up to four face to face Project meetings (including the project start-up meeting) will be held involving the full Project Review Team, which are likely to be held at Environment Agency offices in Shrewsbury/Lichfield and the Contractor should include travel expenses based on the furthest meeting location from the Contractor's normal place of work. ***In the absence of a Project meeting, a written report of progress should be circulated to the Task Review Team at the end of the month.***

In addition to these face to face meeting, there will be a minimum of 4 technical meeting (WebEx call) to maintain a high standard of technical quality. It is expected that these technical meetings might primarily be in Phase 1 (Task 1), Phase 2 (Task 2, Task 4 and Task 5) and Phase 3.

4 Task Specification

This project aim is to develop and update an existing Fully Distributed Numerical Model that meets the general and specific objectives stated in the Section 1.

The Contractor should note that reporting is required at the end of each Task, rather than a single report in order to facilitate this.

The Sub-tasks listed below have strong interdependencies. The Sub-tasks are listed in approximate order, but by necessity there will be some overlap. There is no Sub-task that explicitly defines the literature review that will be required to complete this work. The Contractor should, therefore, note that as part of undertaking the Sub-tasks listed below under Phase 1, a detailed literature review will be required (and hence referenced in any reporting) this should be accounted for (but not explicitly) in the financial proposal.

Phase 1 - This phase includes three tasks primarily focusing on the development of the conceptual model of the Alberbury GWMU and extending the time series of the existing model.

The detail of each tasks are as follows:

Phase 1 Task 1– Data Compilation & Review, Conceptualisation of Alberbury GWMU and Reporting

The following sub tasks will be undertaken –

Subtask 1.1.1: Data Compilation, Review and Quality Assurance

It is anticipated that the Contractor will collate, analyse and undertake quality check of the following datasets. The list is not exhausted, therefore, additional data analysis and review may require.

- Groundwater and surface water abstraction and discharge data
- Relevant surface feature and climatic data (PE data, landuse, soil, mains leakage, rainfall, watercourse and topographic surface data)
- Groundwater level analysis

- Analysis of Pumping Tests
- Stream flow analysis at catchment and sub-catchment scale
- Calculation of effective rainfall and potential recharge
- BGS maps and borehole logs

Sub-task 1.1.2 Development of hydrogeological quantitative conceptual model

This conceptual model forms the foundation upon which the numerical model will be built, therefore, the ideas it embodies need to be comprehensively tested prior to and during any numerical modelling. Prior to the commencement of model development the Contractor is required to formulate its ideas concerning the dominant recharge mechanisms (detailed consideration of superficial deposits and bedrock geology including subsurface topography), aquifer flow processes and the degree of surface water-groundwater interaction into a conceptual model.

Additionally following completion of conceptualization the Contractor will have;

- defined the boundaries of the extended area and its subdivision into appropriate zones (vertically and horizontally) based on the hydrogeology
- defined the model boundaries to be adopted for the numerical model (**Phase 2**)
- described the hydrogeological conditions and flows at the boundaries of the study area
- estimated all inflows and outflows, and their variation in time
- estimated the plausible range of all aquifer parameters in each hydrogeologically distinct zone
- Developed quantitative groundwater and total catchment water balance
- described any limitations of the current conceptual understanding and the major sources of uncertainty

Sub-task 1.1.3: Reporting and preparation of deliverables

It is expected that the detail description of the conceptual report will form one or several chapters of the feasibility report. Specifically it should give an explanation of the following items:

- an account of the major analysis stages of the work, specifically groundwater hydrograph and surface water hydrograph/spot gauging analysis;
- an account of the calculation of potential recharge and actual recharge and water balance calculations
- an account of the development of the conceptual model of the investigation area, including understanding the superficial geology and its interaction/juxtaposition with the underlying PT sandstone.

The appendices should only contain factual descriptions of data collation and detailed data processing. It is envisaged that there will be appendices for the following items:

- abstraction and discharge data;
- hydrometric data;
- calculation of potential recharge (for both GWMU unit and WFD a scale))
- calculation of water balances.

Phase 1 Task 2 –Feasibility report

To produce a report on the feasibility of the development of a numerical recharge and groundwater model and its impact on the calibration of the existing ESM model.

Phase 1 Task 3 - Time series update of the existing ESM model

This task will require extending the existing ESM model data sets from January 2013 to December 2019

Subtask 1.3.1: Update of PE time series

The East Shropshire model uses single station MORECS data from Shawbury. These data will be provided to the Contractor.

Subtask 1.3.2: Update and groundwater and surface water abstractions and discharges time series

Abstraction data sets will be provided from National Abstraction Licensing Database (NALD) – this will require infilling of data gaps. For the SGS separate spreadsheets will be provided with abstraction records. It is expected that the contractor will work closely with the Environment Agency's SGS lead Kevin Voyce. The Contractor will check the quality of the data by comparison with the RAM ledger for the Worcester Middle Severn CAMS.

Subtask 1.3.3: Update of mains leakage

Any new mains leakage data provided by the water companies should be analysed and updated in the 4R model.

Subtask 1.3.4: Update of rainfall

This requires daily rainfall records for numerous rain gauges in the model area and is a relatively complex task requiring gap filling with synthetic data.

Subtask 1.3.5: Update of groundwater level and stream flow time series

The post-processing spreadsheets will need to be updated with recent groundwater level and stream flow data.

Subtask 1.3.5: Rerun the updated ESM model

This subtask requires the contractor to run the model with the updated data set and post process the output and update all the existing post processing spreadsheet and post processing tools and utilities.

In addition, it is expected that the Contractor will update all input and output files so that Phase 3 can be undertake if Phase 2 does not go ahead.

Task Outcomes and Deliverables:

- Updated and validated datasets supporting the model from January 2013 to December 2019
- Updated pre and post-processing spreadsheets, 4R and MODFLOW input files and Output files including utilities.

Constraints:

Review on Phase 1 – Following the completion of the Phase 1, the project board will review the output and evaluate the technical feasibility, its impact on current calibration i.e. without reducing confidence on the model and remaining budget. Depending upon the decision, the project may exclude Phase 2 and directly move onto Phase 3.

Phase 2 – This phase consists of five tasks. The main objective of this phase is to develop a 4R Recharge-runoff and groundwater model of the extended ESM model area without impacting on the calibration quality of the existing ESM model.

Phase 2 Task 1 – Collation and preparation of the time series data input datasets of the extended area

Phase 2 task 2 – Construction of recharge-runoff and groundwater model of the extended area

Phase 2 task 3 – Development of Steady-state groundwater model / initial groundwater heads for the extended area

It may be useful to develop a steady state groundwater model alongside a transient model for the extended area as the steady-state targets give a clear indication of the spatial distribution of differences between observed groundwater levels and simulated groundwater heads at the targets and the effects of changes to the combined model can be seen and compared with the previous version rapidly.

The existing ESM model has a steady-state groundwater model that was used to calculate the initial groundwater heads for the transient groundwater model. The steady-state groundwater model has average rates of recharge and runoff to streams calculated from the recharge model output for the first 4 years (1960-1963). (The recharge model has a lead in time of 4 years before the groundwater model starts in 1964). Abstraction rates in the steady-state groundwater model are set as the License of Right abstractions.

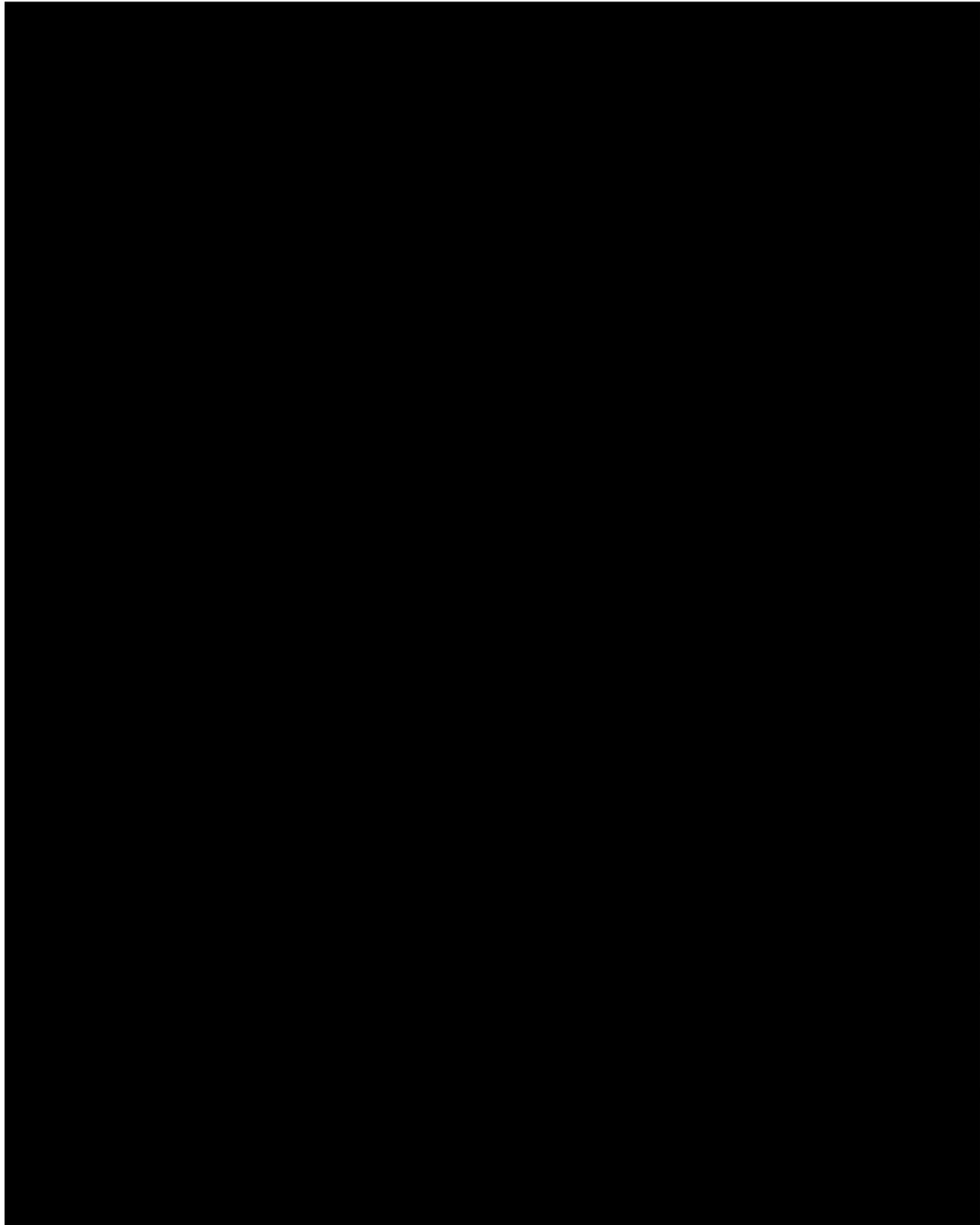
Therefore, it is anticipated that the existing steady groundwater model will be updated so that the initial groundwater heads of the whole ESM are consistent with the transient groundwater model.

Phase 2 task 4 – Calibration of the extended area of the Recharge-runoff and groundwater model

Phase 2 task 5 - Model Recalibration and Refinement of the whole ESM Model (Recharge-runoff and groundwater model)

On completion of the new runoff-recharge model for the extended area, a number of recalibration and refinement steps will be required to ensure that heads and flows simulated by the whole ESM model are as good as, or better, than the existing calibration. These largely relate to ensuring consistency between the existing and newly extended recharge and groundwater model. The specific targets for the justification of the recalibration of the model will be agreed by the project team at the beginning of the Phase 2.

The heads and flows simulated by the newly updated whole ESM model should be as good as the existing ESM model to be accepted by the Agency.



customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88

Phase 3 Task 3 - Final Reports

Following the successful completion of task 2 of Phase 3, the Contractor shall produce a final report which would be suitable for presentation at a Public Inquiry.

The Contractor shall also issue an additional pdf version for external use that has been redacted of all sensitive information.

Approach

The final report should cover all aspects of the study. The Contractor shall agree with the Environment Agency Project Manager about the exact contents of the report prior to the end of the task 2.

This will be an Environment Agency report where the Contractor is writing on behalf of the Agency and, therefore, may require the incorporation of material or information external to this task but needed by the Environment Agency. All such additional information will be provided by the Environment Agency. The report shall require a greater level of interchange between the Contractor and the Environment Agency as such that the Contractor shall anticipate at least two draft versions of the report. The title of the draft reports shall reflect the draft version number.

Following the approval by the Agency Project Manager that further drafts are not required the Contractor shall issue within 15 days of approval a well-linked pdf version of the report.

Outputs

The final report will be a well linked PDF report.

A draft report should be issued in electronic format (MS word format). The report will include the following items:

- 1) Details of the update of the East Shropshire model as performed in Phase 1
- 2) Deductions as to the impact of historical groundwater abstractions on surface water flows and regional groundwater levels and any new insights forthcoming from the increase of time series to December 2019.
- 3) The results of the scenarios performed in Phase 3 including recommendations

The Contractor shall state clearly within the report the assumptions and limitations made within the final calibrated model.

It should be noted that the standards of reporting should be high and a style guide will be used and adhered to rigorously. This will include:

- formats of tables and headings;
- agreed colours, scales for maps and graphs;
- a glossary of agreed technical terms.

It is emphasised that unclear, imprecise or loose technical/scientific terminology will not be acceptable. The Contractor should note that narrative style in past tense is not acceptable unless it is critical for explaining the hydrogeological understanding.

5 Electronic deliverables

A large amount of electronic data will be collected and processed. It will be expected that the processed data sets will be handed over to the Environment Agency at the end of the Task. The format of these processed data sets (in particular annotation in complex spreadsheets) will be agreed with the Task Review Team. The final water balance calculations will be rerun by the Environment Agency as part of the Project QA procedure.

Electronic deliverables will be accepted in the following format (should be compatible to Environment Agency computer systems):

- ArcView;
- Surfer;
- Excel;
- Formatted ASCII data files.

The following data will be required as a minimum:

- all surface water and groundwater abstraction and surface water discharge data;
- all compiled and quality assured groundwater hydrograph data;
- all compiled and quality assured surface water hydrograph data including spot gauging data;
- all groundwater level contour maps;
- all input and output for the calculation of potential and actual recharge, including any derived spatial distribution maps associated with input parameters for the calculation;
- all input and output of the water balance calculations.
- all pre-post processing 4R and Modflow data including utilities
- all input and outfiles of 4R and modflow including executive files
- all output files mentioned in the section 3

All these electronic deliverables will be required for future work, specifically for pre and post-processing for regional groundwater modelling and potentially for future CAMS. Consideration to the final formats will be given during the Task and will be agreed with Task Review team.

A single electronic deliverable should be produced (encrypted USB hard disk) that has been properly quality assured. The deliverable should have an extensive set of 'README' files detailing the exact content and purpose of every single file. The Project Manager will quality assure this deliverable. If this is found to be incomplete, or that files are corrupted or incompatible to the environment agency computers, then the Contractor will be required to reissue the entire electronic deliverable that is compatible to the Environment Agency computers.

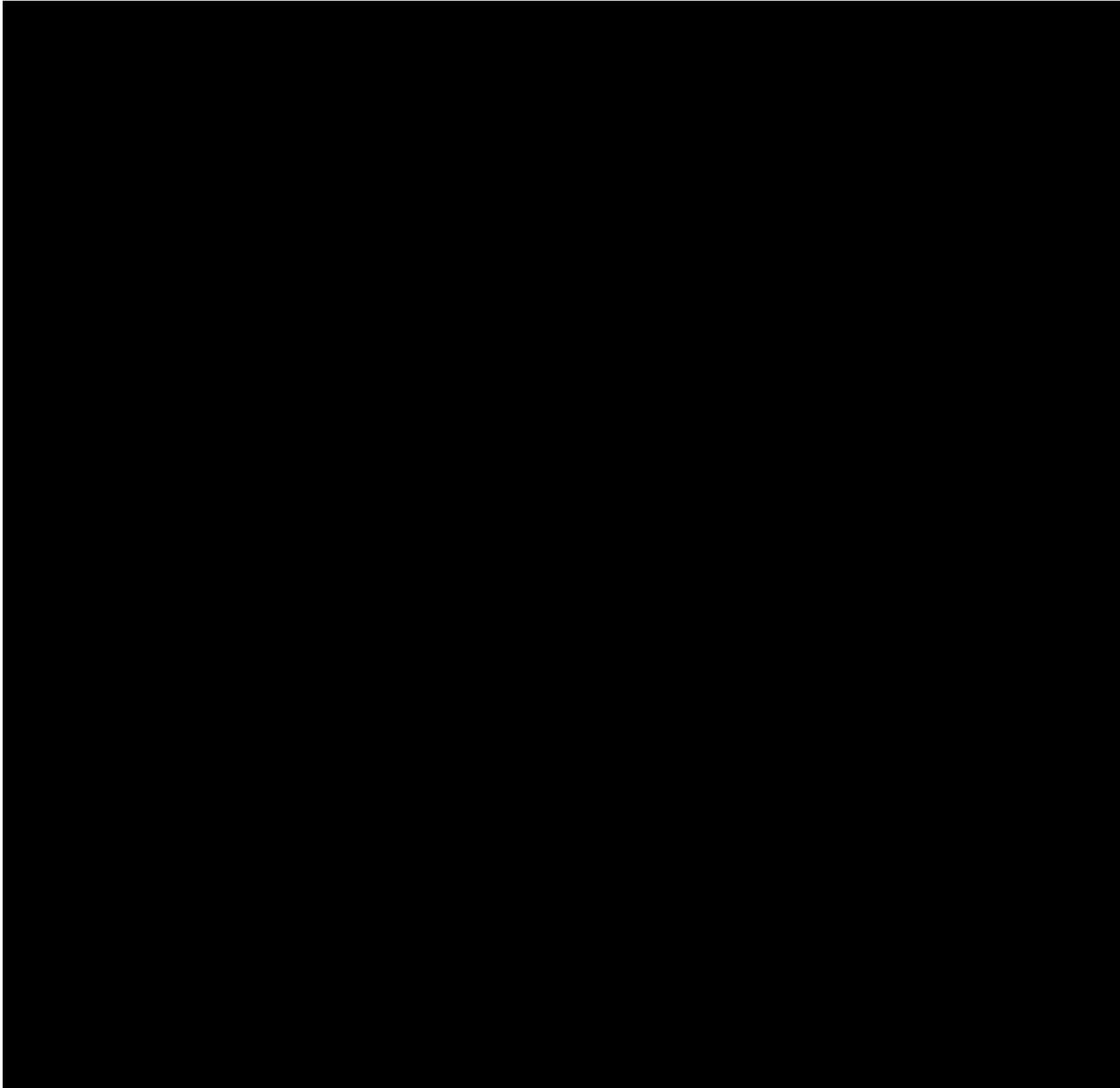
On completion of the Project the Project Manager will instruct the Contractor to delete all electronic files associated with this Task from its systems. Until this time, the Contractor should maintain an electronic archive of the work performed under this Task. The Contractor should not use any data associated with this Project for any other purpose unless requested by the Environment Agency.

| Optional Extras | |
|--|------------|
| Phase 1, Task 1.1.2a 3D Geological Model | ██████████ |
| Phase 1, Task 3.1.1a Improved Spatial PE | ██████████ |
| Phase 1, Task 3.1.4a More maintainable rain and analysis | ██████████ |
| Phase 2, Task 1a - Alberbury in 3D Geological Model | ██████████ |
| Phase 2 (or 1), Task 5a - PEST_HP Calibration | ██████████ |
| Phase3, Task 3b more comprehensive Model Map | ██████████ |
| Total cost of extras | ██████████ |

customer service line
03708 506 506

incident hotline
0800 80 70 60

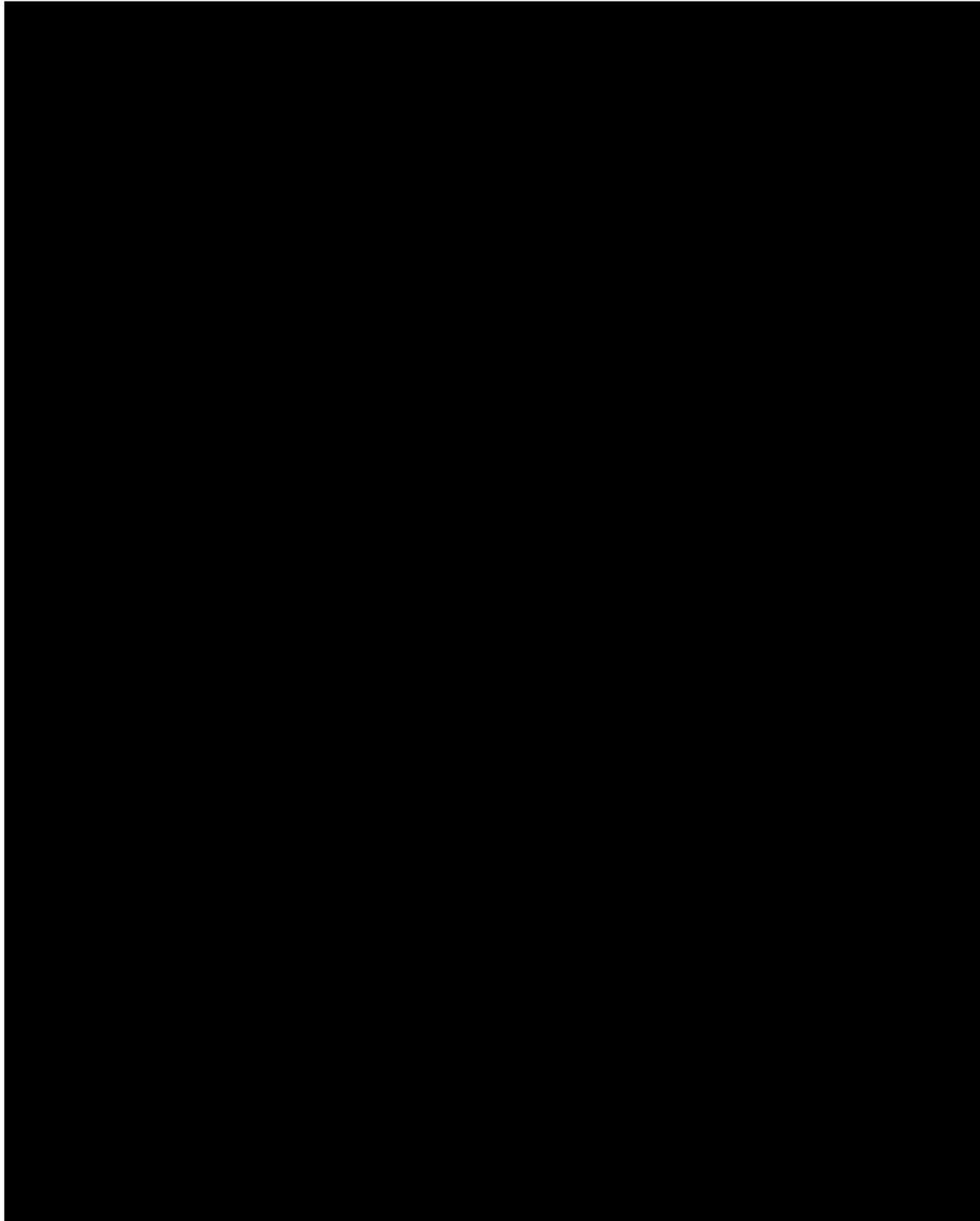
floodline
03459 88 11 88



customer service line
03708 506 506

incident hotline
0800 80 70 60

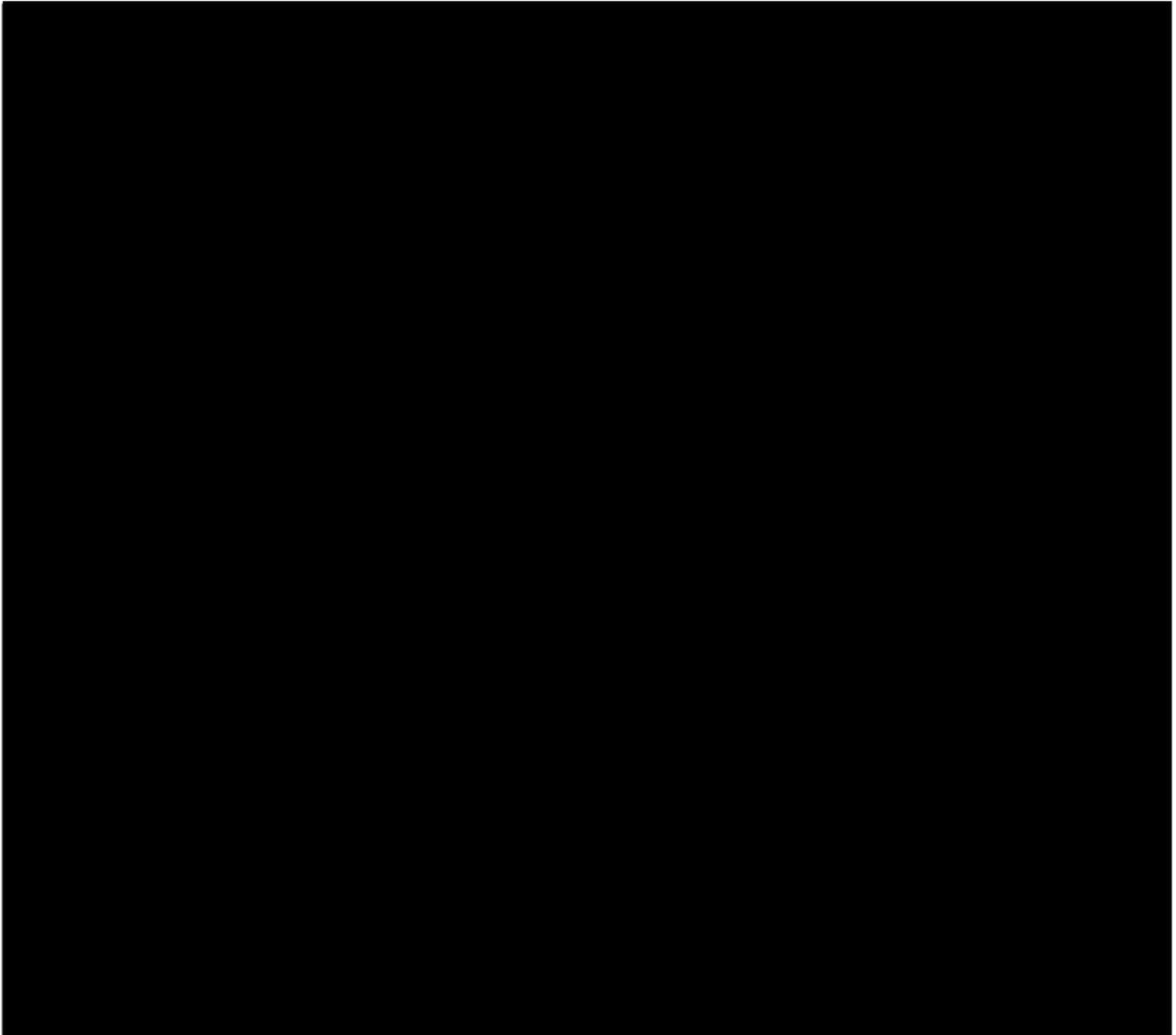
floodline
03459 88 11 88



customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88



customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88

9. Programme and payment Schedule

The programme of works will be delivered as detailed in the Gantt chart dates and activities submitted in the Groundwater Science tender document (included in section 11 of the appendix). Payment will be made on submission and acceptance of each phase of work (including optional extras), according to the dates detailed in the Gantt chart.

| Payment Schedule | | |
|------------------|--------------------------------------|-------------------|
| Phase 1 | Task 1 – 3 (including all subtasks) | Payment Milestone |
| Phase 2 | Task 1 – 5 (including all sub tasks) | Payment Milestone |
| Phase 3 | Task 1 – 3 including final report | Payment Milestone |

10. GDPR

Schedule Processing, Personal Data and Data Subjects

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|--|---|
| Subject matter of the processing | East Shropshire Groundwater Modelling Project |
| Duration of the processing | 01.06.2020 – 01.04.2021 |
| Nature and purposes of the processing | <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> <p>There will not be any personal data collected throughout the duration of this project.</p> |
| Type of Personal Data | None collected. |
| Categories of Data Subject | None collected. |
| 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 | None collected. |

10. Contract Change

Contract Change Note (“CCN”)

| | |
|--|----|
| CCN Number | 01 |
| Contract Reference Number & Title | |
| Variation Title | |
| Number of Pages | |

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

- 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 | |

- 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.

Authorised Authority Representative

Name:

Date: 2020

customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88

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

Name

Date.....

Authorised Contractor Representative.....

Name.....

Date.....

11. Gantt chart dates and activities

customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
03459 88 11 88