



Department  
for Environment  
Food & Rural Affairs

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## **Contract for the the Review of Approaches for Determining the Environmental Water Need**

**Contract Reference 28378 – WT15120**

**August 2020**

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# SECTION 1

## FORM OF CONTRACT

### PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of [REDACTED]  
[REDACTED] (the “**Authority**”);

### AND

- (2) **UK Centre for Ecology & Hydrology** of [REDACTED]  
[REDACTED] (the “**Contractor**”)

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

### WHEREAS

- a) Following a competitive tender process, the Authority wishes to appoint the Contractor to provide the certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.
- b) The Authority will enter into the Contract on the basis that it requires the Services for the Initial Contract Period. However, in entering into the Contract, both Parties acknowledge that circumstances may prevent the Authority from fulfilling the funding requirements of the Contract for the Initial Contract Period. In these circumstances, the Parties undertake to discuss the future scope of the Contract before the end of the relevant Project Year.

### NOW IT IS HEREBY AGREED as follows:

#### 1. TERMS OF CONTRACT

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

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
Schedule 2:	Prices
Schedule 3:	Change Control
Schedule 4:	Commercially Sensitive Information
Schedule 5:	Processing, Personal Data and Data Subjects
Schedule 6:	Co-Funder Provision

- 1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority’s electronic contract management system (“**Bravo**”).
- 1.3 The Contract starts on 1<sup>st</sup> **August 2020** (the “**Commencement Date**”) and ends on 31<sup>st</sup> March **2021** (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.

- 1.4 The Authority may extend the term of the Contract until **30<sup>th</sup> June 2021** ("**Extension**"). The terms of the Contract will apply throughout the period of any Extension.

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## A GENERAL PROVISIONS

### A1 Definitions and Interpretation

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

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

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

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

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

“**Authority Data**” means

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

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

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

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

**“Biological Materials”** means any material (including, without limitation, plants, animals, microbes or viruses) of biological origin which contains genetic information capable of reproduction and/or material derived from the same that is collected or produced through the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services

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

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

**“Conventions”** means any and all of: i) the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture, including any Protocols and other additions or amendments from time to time; ii) any guidelines adopted by the parties to the same (including, without limitation, the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization); and iii) any national legal or regulatory requirements made in pursuance of the provisions of the same in any territory.

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

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

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

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

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

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

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

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

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

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

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

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in

secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

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

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

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

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

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

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

**“Force Majeure Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain and events arising out of or in connection to either or both coronavirus (the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)) and/or COVID-19 (the official designation of the disease which can be caused by coronavirus).”.

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

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

**“General Anti-Abuse Rule”** means:

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

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

**“Goods”** means any goods supplied by the Contractor (or by a Sub-Contractor) under the Contract as specified in Schedule 1 including any modified or alternative goods

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

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

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

**“Income”** means any revenues received by the Contractor (including, without limitation, the sale or disposal of products or services, royalties, payments for licences or options and stage payments) irrespective of whether such payment is in money or other consideration, arising from the use or exploitation of the Results or any part of the Results.

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

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

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

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

**“Key Biological Materials”** means Biological Materials held by or on behalf of the Contractor that are agreed by the Contractor, the Authority and (if relevant) the appropriate independent scientific advisory body (in each case acting reasonably) to be of national or international importance.

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

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

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

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

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

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

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, B16, D1, E1, E2, E3, E4, E7, E8 or E11.

**“Month”** means calendar month.

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

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

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

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

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

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

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

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

**“Prohibited Act”** means:

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

**“Project Year”** means each period of 12 months during the Contract Period beginning with the Commencement Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Services”** means the services set out in Schedule 1 (including any modified or alternative services) and, if the context so requires, includes Goods.

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

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

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

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

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

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

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

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

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services.

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

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

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

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

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

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

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

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (h) references to the Contract are references to the Contract as amended from time to time; and
- (i) if there are no Co-funders, references to the Co-funders shall have no meaning or effect.



## **A2 The Authority's Obligations**

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

## **A3 Contractor's Status**

- A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

## **A4 Notices and Communications**

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- A4.2 If it is not returned as undelivered a notice served:
- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
  - (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
- or when the other Party acknowledges receipt, whichever is the earlier.
- A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.
- A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:
- (a) For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]
  - (b) For the Contractor:

Contact Name: [REDACTED]

Address:

[REDACTED]

Email:

[REDACTED]

**A5 Mistakes in Information**

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

**A6 Conflicts of Interest**

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

## **B. THE SERVICES**

**B1 Specification**

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

**B2 Samples**

- B2.1 If requested by the Authority, the Contractor shall provide the Authority with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.
- B2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.
- B2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor's obligations under the Contract.

**B3 Delivery**

- B3.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. If the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- B3.2 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.



- B3.3 Any access to the Premises and any labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.
- B3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Contractor and its Sub-Contractors shall at all times comply with the security requirements of the Authority.
- B3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.6 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice to the Contractor to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.
- B3.7 Unless expressly agreed to the contrary, the Authority shall not accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- B3.8 The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination. In this clause B3, Services include planning or preliminary work in connection with the supply of the Services.
- B3.9 If reasonably requested to do so by the Authority, the Contractor shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.
- B3.10 Timely supply of the Services is of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Contractor fails materially to deliver the Services within the time promised or specified in the Specification, the Authority is released from any obligation to accept and pay for the Services and may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

#### **B4 Risk and Ownership**

- B4.1 Subject to clauses B3.5 and B3.6, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Authority at the time of delivery.
- B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority at the time of delivery (or payment, if earlier).

## **B5 Non-Delivery**

- B5.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- B5.2 If the Authority has been informed in writing of the despatch of the Goods and, having been placed in transit, the Goods are not delivered to the Authority on the due date for delivery, the Authority shall, within 10 Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods free of charge within the timescales specified by the Authority or terminate the Contract in accordance with clause B3.10.

## **B6 Labelling and Packaging**

- B6.1 The Contractor shall ensure that the Goods are labelled and packaged in accordance with the Contract.
- B6.2 The Contractor shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003. The container in which the Goods are held shall be labelled with the Contractor's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B6.3 The Contractor is responsible for the removal and disposal of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.
- B6.4 If no period for collection and disposal is specified by the Authority, the Contractor shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority shall be entitled to dispose of any packaging materials which have not been collected by the Contractor within those 10 Working Days or such other period specified by the Authority for collection. The Contractor shall be responsible for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.
- B6.5 The Contractor shall:
- (a) use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
  - (b) reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
  - (c) make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
  - (d) if using wooden pallets or timber derived products for the packaging and supply of Goods comply with the Authority's timber procurement policy;
  - (e) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
  - (f) if requested to do so, provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

## **B7 Training**

- B7.1 If included in the Specification, the Price includes the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

## **B8 Provision and Removal of Equipment**

- B8.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B8.2 The Contractor shall not deliver any Equipment to or begin any work on the Premises without obtaining Approval.
- B8.3 All Equipment brought onto the Premises is at the Contractor's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B8.4 Unless otherwise agreed, Equipment brought onto the Premises remains the property of the Contractor.
- B8.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment is the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B8.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B8.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B8.8 Within 20 Working Days of the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.

## **B9 Goods Delivery**

- B9.1 The Contractor shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - (b) in accordance with Good Industry Practice; and
  - (c) in compliance with all applicable Laws.
- B9.2 The Contractor shall ensure the Goods:

- (a) conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;
- (b) operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification;
- (c) conform in all respects with all applicable Laws; and
- (d) are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

## **B10 Service Delivery**

- B10.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B10.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.
- B10.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:
- (a) accept the installation; or
  - (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.
- B10.4 If the Authority rejects the installation pursuant to clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.
- B10.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any installation in accordance with clause B10.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.
- B10.6 During the Contract Period, the Contractor shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
  - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
  - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

## **B11 Key Personnel**

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

## **B12 Contractor's Staff**

- B12.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff
- whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.
- B12.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B12.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B12.2 shall be final.
- B12.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

## **B13 Inspection of Premises**

- B13.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## **B14 Licence to Occupy Premises**

- B14.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.

- B14.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B14.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay.
- B14.4 The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority.
- B14.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

## **B15 Property**

- B15.1 All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B15.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B15.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B15.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B15.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B16 Biological Materials**

- B16.1 The Contractor shall ensure that any Biological Materials collected by or on behalf of the Contractor in the course of performance of the Services are:
- (a) collected and used in accordance with the Conventions, where relevant;
  - (b) made available to the Authority (or such other person as the Authority may specify) whenever and wherever and in whatever format the Authority may reasonably require for any purpose (including, without limitation, handover on termination of the Services); and



- (c) stored for whatever period is reasonably required by the Authority (or, in the absence of any such requirement, an appropriate period in all the circumstances taking into account the nature of the relevant Biological Materials) following termination of the Contract.

- B16.2 The Contractor recognises and acknowledges for the purposes of clause B16.1 (c) that Key Biological Materials in its possession are likely to require long term maintenance and shall put in place appropriate procedures for ensuring that relevant samples are selected for this purpose where applicable.
- B16.3 The Contractor shall identify any requirements of the Conventions (including, without limitation, benefit-sharing requirements arising from use of Biological Materials) which may apply in connection with the Services. The Contractor shall comply with any such requirements and inform the Authority of the same. This clause B16.3 shall be without prejudice to the generality of clause B10.1.
- B16.4 Failure to comply with any obligation in clause B16 shall amount to a Material Breach for the purpose of clause H2 (Termination on Default). For the avoidance of doubt, where no Biological Materials are, or are to be, collected by or on behalf of the Contractor in the course of performance of the Contract all references to Biological Materials in this clause B16 or elsewhere in the Contract shall have no effect.

## **B17 Offers of Employment**

- B17.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

## **B18 Employment Provisions**

- B18.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
  - (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
  - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B18.1(a);
  - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B18.1(a), their job titles and qualifications;
  - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B18.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Contractor shall give the Authority updated TUPE Information.
- B18.3 Each time the Contractor supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Contractor.
- B18.4 The Authority may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

- B18.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Authority, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
  - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
  - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B18.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.
- B18.7 This clause B18 applies during the Contract Period and indefinitely thereafter.
- B18.8 The Contractor undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
  - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.




## C PAYMENT

### C1 Price

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

### C2 Payment and VAT

- C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.
- C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- C2.5 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Contract;
  - (b) (if Goods are included in the Specification) the name and quantity of the Goods delivered including batch numbers;
  - (c) the Purchase Order number
- and, if requested by the Authority:
- (d) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
  - (e) the name of the individuals to whom the timesheet relates and hourly rates for each;
  - (f) identification of which individuals are Contractor's staff and which are Sub-Contractors;
  - (g) the address of the Premises and the date on which work was undertaken;
  - (h) the time spent working on the Premises by the individuals concerned;
  - (i) details of the type of work undertaken by the individuals concerned;
  - (j) details of plant or materials operated and on standby;
  - (k) separate identification of time spent travelling and/or meal or rest breaks; and
  - (l) where appropriate, details of journeys made and distances travelled.
- C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.

- C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.
- C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.
- C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).
- C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:
- 
- C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.20 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at

any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

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

C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.

C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **C4 Price during Extension**

C4.1 Subject to Schedule 2 and clause F7 (Variation), the Price shall apply for the Initial Contract Period and until the end date of any extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## **D. STATUTORY OBLIGATIONS**

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

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

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

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

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

- D1.3 The Contractor shall, during the Contract Period:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.
- D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

## **D2 Discrimination**

D2.1 The Contractor shall:

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

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

- D3.1 The provisions of clause B18.5 and E8.3 confer benefits on persons named in such provisions (together “**Third Party Provisions**”) other than the Parties (each person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”).
- D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

### **D4 Health and Safety**

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

### **D5 Environmental Requirements**

- D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority’s environmental, sustainable and ethical procurement policies (“**Environmental Policies**”) which require the Authority through its procurement and management of suppliers to:
- (a) conserve energy, water, wood, paper and other resources and reduce waste;
  - (b) phase out the use of ozone depleting substances;
  - (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
  - (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
  - (e) reduce fuel emissions wherever possible;
  - (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
  - (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

- D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:
- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
  - (b) HFCs and other gaseous and non-gaseous substances with a high global warming potential;
- unless given written permission by the Authority to do so.
- D5.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.
- D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.
- D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.
- D5.6 The Contractor shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under the Contract.
- D5.7 The Contractor shall:
- (a) identify any risks from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
  - (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

## **E PROTECTION OF INFORMATION**

### **E1 Authority Data**

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **E2 Data Protection**

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor.
- E2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- E2.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;



- (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

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

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority;



- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- E2.6 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.
- E2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - (a) the Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Authority following any Data Loss Event;
  - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- E2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - (a) the Authority determines that the processing is not occasional;
  - (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.
- E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
  - (a) notify the Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Authority;

- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

E2.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.

E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act 1989**

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

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

### **E4 Confidential Information**

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

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

E4.3 [Intentionally left blank]

E4.4 The Contractor shall ensure that its Staff, professional advisors, consultants and sub-contractors are aware of the Contractor's confidentiality obligations under the Contract.

E4.5 The Contractor may only disclose the Authority's Confidential Information to the Staff, professional advisers, consultants and sub-contractors who are directly involved in the provision of the Services and who need to know the information. The Contractor shall ensure that such Staff, professional advisers, consultants and sub-contractors are aware of and shall comply with these obligations as to confidentiality and shall be liable for the actions, omissions or breaches of such persons and bodies as if they were the actions, omissions or breaches of the Contractor.

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

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

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

E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
- (d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

E4.10 The Authority shall use its reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.8 is made aware of the Authority's obligations of confidentiality.

E4.11 Without prejudice to liability of the Contractor in clause E4.5, if the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on notice to the Contractor.

E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

- E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

## **E5 Freedom of Information**

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

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

- E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- E6.2 The Contractor shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.
- E6.3 Notwithstanding clause E6.1 but subject to clause E4 (Confidential Information) and Schedule 4, the Contractor shall endeavour to make the Results generally available (including in scientific journals where reasonably appropriate) and shall acknowledge in any public statement the financial support of the Authority and the Co-funders. The Contractor shall send details of any proposed publication to the Authority at least 2 weeks prior to the proposed publication and shall notify the Authority immediately if approached by the media about the Services.
- E6.4 Subject to clause E4 (Confidential Information) and Schedule 4 the Authority may disclose, copy and otherwise distribute to the public or use in any way any information arising out of the Services or comprised in any work relating to the Services.
- E6.5 Nothing in the Contract shall permit or require the Contractor or the Co-funders to make any disclosure of information which would jeopardise any commercial exploitation of the Results.

## **E7 Security**

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Authority shall give the Contractor upon request copies of its written security procedures.

- E7.3 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
  - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

## **E8 Intellectual Property Rights**

- E8.1 All Intellectual Property Rights in:

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

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract and as permitted under the licence granted by the Authority in clause E8.10

The Parties agree all Intellectual Property Rights owned or controlled by either Party prior to the commencement of or created independently from this Contract and which the owning Party uses or contributed in the course of performing its obligations under this Contract, including but not limited to the Services ("Background Intellectual Property Rights") shall remain the property of the Party introducing it

- E8.2 The Contractor hereby assigns:

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

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

- E8.3 The Contractor shall:

- (a) subject to applicable third party rights and licensing restrictions ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");
  - (b) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
  - (c) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.3, except to the extent that any such claim results directly from:
    - i) items or materials based upon designs supplied by the Authority; or
    - ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- E8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.
- E8.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or an Indemnified Person) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
  - (b) take due and proper account of the interests of the Authority; and
  - (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- E8.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3 (c) i) and ii).
- E8.7 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3 and G2.1(g)) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or



- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

- E8.9 The Contractor grants to the Authority and, if requested by the Authority, any Replacement Contractor, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any of its Background Intellectual Property Rights) that the Contractor owned or developed prior to the Commencement Date and which the Authority (or the Replacement Contractor) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).
- E8.10 Subject to Clause E6.3 and E6.5, the Authority hereby grants the Contractor an irrevocable, non-exclusive royalty-free licence to use the Results solely for academic and research purposes and for no commercial gain, including but not limited to research projects funded by third parties provided that those parties gain or claim no rights to such Results. This licence is non-transferable, save that the Contractor may sub-license it to its SubContractors.

## **E9 Commercial Exploitation**

- E9.1 The Contractor shall:
  - (a) ensure that its staff, students and sub-contractors are and will be engaged in relation to the Contract and the Services on terms which do not entitle any of them to any rights in the Results; and
  - (b) ensure that it is and remains entitled to transfer free from any encumbrances any title and/or rights necessary to effect the vesting of Intellectual Property Rights required by the Contract.
- E9.2 Subject to clauses E9.3 and E9.4 the Contractor will use reasonable endeavours to exploit the Results commercially for its benefit and the benefit of the Authority and the Co-funders.
- E9.3 The Contractor shall identify and inform the Authority of any Results which it considers suitable for commercial exploitation. If the Contractor has identified an opportunity for the commercial exploitation of the Results then it shall either apply to the Authority for a licence (with a right to sub-license as required) as may be necessary, or provide such assistance as is required by the Authority to facilitate a licence being granted by the Authority to a third party.
- E9.4 The Contractor shall identify and inform the Authority of any Results which may be suitable for registration as a patent, copyright, registered design, trade mark or other legal protection and shall use its reasonable endeavours to apply for such protection throughout or in any part of the world in the name of the Authority, and shall maintain such protection in such part of the world as it considers suitable at its own expense.
- E9.5 Subject to clause E9.6 the Income from the commercial exploitation of the Results shall, after deduction of allowable costs as described below, be apportioned between the Parties as follows:
  - (a) the Authority and Co-Funders: 10%, to be divided in the proportion of the actual payments made to the Contractor under the Contract by the Authority and Co-Funders respectively; and

(b) the Contractor: 90%.

E9.6 The Income referred to in clause E9.5 shall be payable for the longer of:

- (a) the term of any patent arising from or incorporating any of the Results; and
- (b) the period in which any Know-How arising from the Results and used in any products or services exploited by the Contractor remains secret and substantial.

E9.7 The allowable costs for the purposes of clause E9.5 shall be limited to:

- (a) the registration fees for the registering of any rights in relation to such Results;
- (b) any legal costs reasonably incurred in relation to legal proceedings in relation to such Results in any appropriate forum and before any appropriate tribunal in any country and any costs ordered by any such tribunal to be paid by the Parties or any of them;
- (c) any other reasonable cost or expenditure which may be agreed from time to time by the Authority and the Contractor; and
- (d) subject to Approval, any reasonable marketing, packaging and/or distribution costs, and any relevant experimental development costs including costs of field trials and/or demonstration projects incurred at the Contractor's expense.

E9.8 The Contractor shall have sole responsibility for making any payments due to Staff under any rewards or incentive schemes, whether contractual, ex gratia, or statutory, in relation to the Results, and any such payments shall not be a cost or expenditure liable to be subtracted from any Income pursuant to clause E9.5. Any payments in respect of a share of Income to be made to the Authority and/or the Co-funders by the Contractor shall be made promptly, in such format as the Authority may direct and accompanied by sufficient information to enable the Authority to identify: i) the contract to which such payments relate; and ii) the means (including a full breakdown of allowable costs) by which such payments have been calculated.

E9.9 If the Contractor does not intend to protect or exploit any Results then the Authority shall be entitled to obtain protection at its own cost and (if clause E8.1 has been amended or varied so that ownership of the Results vests in the Contractor) to have assigned to it at no charge all rights in the relevant Results. The Contractor will not be entitled to any share of the Income generated as the result of the protection or exploitation of the relevant Results obtained by the Authority.

E9.10 For the avoidance of doubt, clauses E9.5 to E9.9 do not apply to and do not affect any Intellectual Property Rights in existence before the commencement of the Services.

## **E10 Audit**

E10.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E10.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E10.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E10.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable



notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **E11 Tax Compliance**

- E11.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give the Authority:
    - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- E11.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

# **F. CONTROL OF THE CONTRACT**

## **F1 Failure to meet Requirements**

- F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- F1.2 The Authority may by notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:
- (a) have such Goods promptly, free of charge and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - (b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.

- F1.3 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause F1.2.
- F1.4 The issue by the Authority of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- F1.5 The Contractor hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. If the Authority shall within such period or within 25 Working Days thereafter give notice to the Contractor of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.
- F1.6 Any Goods rejected or returned by the Authority as described in clause F1.2 shall be returned to the Contractor at the Contractor's risk and expense.

## **F2 Monitoring of Contract Performance**

- F2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "Review Date"), the Authority shall carry out a review of the performance of the Contractor ("Checkpoint Review"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may produce a report (a "Checkpoint Review Report") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.
- F2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

## **F3 Reporting**

- F3.1 Unless otherwise authorised in writing by the Authority, the Contractor shall submit an annual report (the "Annual Report") for each Project Year to the Authority in accordance with this clause F3.

- F3.2 The Contractor shall provide one hard copy of the Annual Report and one copy on either computer readable disk or e-mail in the format specified by or agreed with the Authority, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, no later than 4 weeks after completion of the Services.
- F3.3 The Annual Report shall:
- (a) list the scientific objectives set out in the Specification, indicating where amendments have been agreed;
  - (b) indicate in non-scientific terms the scientific progress achieved since the Commencement Date or since the last Annual Report; how this relates to the policy objectives as set out in the relevant current statement of policy rationale and programme objectives relating to research and development issued by the Authority in accordance with the Specification, plus any findings of particular interest;
  - (c) indicate whether the scientific objectives in the Specification are appropriate for the remainder of the Contract Period, giving reasons for any changes, together with financial, Staff and time implications;
  - (d) list the milestones for the relevant Project Year as set out in the Specification, indicating which milestones have been met and whether the remaining milestones appear realistic (subject to clause F4);
  - (e) list any outputs, for example, published papers or presentations and identify any opportunities for exploiting any Intellectual Property Rights or technology transfer arising out of the Services and any action taken to protect and exploit such Intellectual Property Rights; and
  - (f) comment briefly on any new scientific opportunities which may arise from the Services.
- F3.4 Unless Approved, the Contractor shall submit by the completion date of the Services a final report (the "Final Report") consisting of 2 hard copies and one electronic copy on either computer readable disk or by e-mail in a format specified by the Authority. The Final Report shall include the following:
- (a) the Services' code and title as set out in the Specification; the name of the Contractor; the total costs; and the Commencement Date and date of completion of the Services;
  - (b) an executive summary of not more than 2 sides of A4 written in a style understandable to the intelligent non-scientist. This should include the main objectives of the Services; the methods and findings of the research; and any other significant events and options for new work; and
  - (c) a scientific report.
- F3.5 The scientific report referred to in clause F3.4(c) above shall contain:
- (a) the scientific objectives as set out in the Specification;
  - (b) the extent to which the objectives set out in the Specification have been met;
  - (c) details of methods used and the Results obtained, including statistical analysis where appropriate;
  - (d) a discussion of the Results and their reliability;
  - (e) the main implications of the findings;
  - (f) possible future work; and

- (g) any action resulting from the research, for example, protection of Intellectual Property Rights and knowledge transfer.

- F3.6 Notwithstanding clause E6 (Publicity, Media and Official Enquiries), the Authority may publish the Final Report on a website. When submitting the Final Report to the Authority the Contractor shall indicate any information contained in the Final Report which it considers to be commercially sensitive or which might otherwise merit non-publication and the Authority shall not disclose such information without first having consulted the Contractor (without prejudice to the Authority's discretion as to whether to publish following such consultation).
- F3.7 The Authority reserves the right to reject any Annual Report or Final Report submitted by the Contractor which is not, in the reasonable opinion of the Authority, satisfactory, either in form or content, having regard to the provisions of this Schedule. If an Annual Report or Final Report is rejected by the Authority, the Contractor shall remedy any deficiencies identified by the Authority and submit a revised version at no additional cost to the Authority or the Co-funders.
- F3.8 The Contractor shall supply any additional reports, including financial reports, in respect of the Services, at such time or times, and in such form, as the Authority may reasonably require. Without prejudice to the generality of the foregoing, the Contractor shall provide to the Authority such information as the Authority may reasonably require regarding commercial exploitation of the Results, including details of any licences granted to third parties in respect of any Intellectual Property Rights in the same. The Contractor shall further keep at its normal place of business detailed accurate and up to date records and accounts showing details of its commercial exploitation of the Results including the sale of products or services which incorporate the Results, Income received, allowable costs deducted and the amount of licensing revenues received by it in respect of the Results in a format sufficient to ascertain that revenue sharing pursuant to the Contract has been properly accounted for and apportioned in accordance with the Contract.
- F3.9 The Contractor shall, subject to reasonable notice, attend all meetings specified in the Contract or otherwise arranged by the Authority for the purpose of discussion of the Services.

#### **F4 Remedies for inadequate performance**

- F4.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
  - (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
  - (d) terminate the Contract in accordance with clause H2.
- F4.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.
- F4.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory

requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

- F4.4 If the Contractor has been notified of a failure in accordance with clause F4.3 the Authority may:
- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
  - (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F4.5 If the Contractor has been notified of a failure in accordance with clause F4.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
  - (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F4.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F4.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F4.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

## **F5 Transfer and Sub-Contracting**

- F5.1 Except where clauses F5.5 and F5.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F5.2 The Contractor is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F5.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E10 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F5.4 If the Authority has consented to the award of a Sub-Contract the Contractor shall ensure that:
- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
  - (b) the Sub-Contract includes a provision having the same effect as set out in clause F5.4 (a) in any Sub-Contract which it awards; and
  - (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.
- F5.5 If the Authority believes there are:

- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
  - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- F5.6 Notwithstanding clause F5.1, the Contractor may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F5.6 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both clauses F5.7 and F5.8.
- F5.7 If the Contractor assigns the right to receive the Price under clause F5.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F5.8 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F5.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F5.10 Subject to clause F5.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F5.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F5.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F5.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F5.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause F5 both such bodies being referred to as the “Transferee”):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.



- F5.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F5.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F6 Waiver**

- F6.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F6.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4.2 (Notices).
- F6.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F7 Variation**

- F7.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 7.
- F7.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.
- F7.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
  - (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F7.4 No Variation will take effect unless and until recorded in a validly executed CCN. Execution of a CCN shall be made via electronic signature as described in clause 1.2 of Section 1 of the Contract.
- F7.5 A CCN takes effect on the date both Parties communicate acceptance of the CCN via Bravo and, on the date it communicates its acceptance of the CCN in this way, the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.
- F7.6 The provisions of clauses F7.4 and F7.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in



order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F8 Severability**

- F8.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F9 Remedies Cumulative**

- F9.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F10 Entire Agreement**

- F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **F11 Counterparts**

- F11.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# **G LIABILITIES**

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

- G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation or;
- (c) any liability to the extent it cannot be limited or excluded by Law.

- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

- G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed **£100,000.00** save that the Contractor's aggregate liability in respect of the Contract shall be increased to **£1,000,000** to the extent liability is for: (i) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (ii) any breach of clauses D1, E1, E2 or E4

- G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract
- G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - (d) any compensation or interest paid to a third party by the Authority; and
  - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
  - (b) indirect, special or consequential loss.
- G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

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

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

### **G3 Force Majeure**

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

# H      DEFAULT,                      DISRUPTION                      AND TERMINATION

## H1      Termination on Insolvency and Change of Control

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

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

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

- (a)      an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b)      a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (c)      a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d)      the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e)      a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;

- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

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

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

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

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

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

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

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

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

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

## **H2 Termination on Default**

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

## **H3 Termination on Notice**

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



#### **H4 Other Termination Grounds**

H4.1 The Authority may terminate the Contract on written notice to the Contractor if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;
- (d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law; or
- (e) (in accordance with the Specification (Schedule 1)) after a break in (i) Task 1 and 2 or (ii) Task 3, the Authority has determined there is no requirement to continue with the Contract.

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

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E10 (Audit), F10 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

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

## **H7 Recovery upon Termination**

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

## **H8 Retendering and Handover**

- H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Contractor indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

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

## **H10 Exit Procedures**

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

## **H11 Knowledge Retention**

- H11.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

- I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
  - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

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

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

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

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

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.



# SCHEDULE 1 – SPECIFICATION

## 1.0 Introduction

Living ecosystems require water. Water and sediment regimes within natural ecosystems are major factors in determining their health and sustainability. Withdrawals of water to meet drinking water demands, grow food, for industrial purposes and produce energy all result in less water for the environment and for maintaining ecosystem health. A feature of any “desirable” future will include the existence of healthy ecosystems, and water is required by the environment to this end.

Water resources management strategies must take human, societal and environmental needs fully into account if those strategies are to be sustainable over the long term and be able to adapt to pressures such as climate change. The challenge faced by current water resources policies and practices to achieve this is to determine how society can extract the water resources it needs while protecting the important natural complexity and adaptive capacity of freshwater ecosystems<sup>1</sup>. Customers’ water needs must be met in a safe, resilient and efficient way, while protecting the environment and respecting good supply practice and the needs of other water users. This is becoming ever more challenging as water resources face increasing pressures from climate change, population growth, societal expectations and increasing environmental aspirations<sup>2</sup>. The Environment Agency is leading the development of a National Framework for water resources<sup>3</sup>. This will develop and present agreed evidence on water deficits which will inform specific expectations and set clear challenges to the industry in advance of the next water resource management plans. Draft water company plans will then be challenged where they do not meet the expectations set out. This project aims to provide evidence to support this process. The evidence from this project will be used to inform future water resource policies by focussing on the water required to meet environmental water needs. Further, this project will document stakeholders’ expectations of what kind of environment we should be planning for in the context of sustainable future water resources.

## 2.0 Background

Climate change presents a significant challenge to aquatic ecosystems and the sustainable abstraction of water. By 2050, the amount of water available could be reduced by 10-15%, with some rivers seeing 50%-80% less water during the summer months<sup>4</sup>. It is therefore important that we check the current state of our understanding about environmental needs and that we are using the best available techniques to be resilient to future challenges and escape the “jaws of death”<sup>5</sup> when demand for water will outstrip supply. The

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<sup>1</sup> <https://www.esa.org/wp-content/uploads/2013/03/issue10.pdf>

<sup>2</sup> <http://www.dwi.gov.uk/stakeholders/price-review-process/Building-resilient-water-supplies-letter.pdf>

<sup>3</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/1978/197809.htm>

<sup>4</sup> <https://onlinelibrary.wiley.com/doi/full/10.1002/hyp.8434>

<sup>5</sup> <https://www.gov.uk/government/speeches/escaping-the-jaws-of-death-ensuring-enough-water-in-2050>



evidence from this research project will inform policy makers, regulators and future investment decisions within the water industry regarding what new supply options and demand reductions may be required to maintain provision of water to society whilst maintaining the environment. The outputs from the review needs to account for variability in rainfall patterns, water demand and water sources both regionally and seasonally as well as longer term trends in available water resources.

As well as the natural sciences understanding of water on ecosystems required to inform policies, water resources planning and management will continue to take place in a social or political environment and be governed by human intervention. Evidence is required to allow for an informed debate amongst all regarding the value that is placed on our environment and the role of water in maintaining this to provide ecosystem services. Regulators' stated ambition is to enter the 2024 planning period with a regulatory framework that fully supports strategic, ambitious and collaborative water resource plans that make sure we have resilient water supplies for the long term<sup>6</sup>. Research is required to inform the development of this framework and ensure the policies are based on the latest scientific understanding which includes natural science, social science and economics.

Existing estimates of environmental water needs in England are based on the Environmental Flow Indicator (EFI) approach. The Environmental Flow Indicator (EFI)<sup>7</sup> is a percentage deviation from the natural river flow represented using a flow duration curve. This percentage deviation is different at different flows, and is also dependant on the ecological sensitivity of the river to changes in flow. EFIs are used to indicate where abstraction pressure may start to cause an undesirable effect on river habitats and species. However, EFIs do not indicate where the environment is damaged from abstraction. There is also a question over the appropriateness of flow as a concept when allocating water to maintain freshwater bodies such as wetlands, lakes and groundwater systems. This project aims to broaden our understanding of the wide range of possible approaches to measure environmental water needs.

The relationship between flow and river biota is complex. Flow has an indirect influence on river ecosystems through dilution and its dynamic interaction with channel morphology that gives rise to different physical habitats. Further, associated processes of sediment transport, interaction with floodplains and water temperature, to name a few, all influence river ecosystems. This research should explore whether alternative approaches to calculate water environmental needs combine both water quantity and quality. Questions include but are not limited to: how do alternative approaches implement dual-quality resources (for example, water resources of different quality standards for different domestic purposes)? Are these approaches feasible? Is such a dual-quality approach beneficial as opposed to dealing with water quantity and quality independently? Do alternative approaches only exist in an academic setting or have they been practically applied? Are alternative approaches climate compliant? How can the approaches be applied to water resources planning regions and/or types of water body?

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<sup>6</sup> <https://www.ofwat.gov.uk/publication/building-resilient-water-supplies-joint-letter-defra-environment-agency-drinking-water-inspectorate-ofwat-water-companies/>

<sup>7</sup> [https://webarchive.nationalarchives.gov.uk/20140328104910/http://cdn.environment-agency.gov.uk/LIT\\_7935\\_811630.pdf](https://webarchive.nationalarchives.gov.uk/20140328104910/http://cdn.environment-agency.gov.uk/LIT_7935_811630.pdf)

### 3.0 Project Aim and Objectives

The aim of the project is to provide evidence that informs policy development required to meet Defra's stated objective in the 25 Year Environment Plan<sup>8</sup> of providing "clean and plentiful water".

The overarching research question is: how can we calculate how much water and what quality water the environment needs (both surface and groundwater)?

The objectives of the project are to:

- Undertake a review of what is known about the correlation between water resources and the state of the environment
- Identify the risks to/impact on the environment of insufficient water
- Identify the different potential approaches and explore their effectiveness, including the Ecological Flow Indicator (EFI)
- Review the potential impact of climate change scenarios
- Provide recommendations on new approaches that could be used to balance societal and environmental demand
- Engage with stakeholders to test the acceptability of these above new approaches

### 4.0 Benefits

The project will improve our understanding of impacts on the water environment. The findings will boost our confidence in our ability to predict how much water the environment needs both in the short and long-term. This is key to a healthy and resilient environment, both now and in the future. It will support both regulators and water companies who need to know how much water must be left for the environment whilst also supporting economic growth and societal demands for water. The research will contribute to the National Framework and support both the future direction of policy and the approaches and techniques used in operational management.

### 5.0 Approach

The current approach to water resource management essentially allocates water to abstractors up to a prescribed level so as not to cause harm to the environment. Beyond that level there is simply no water left for any further use. With changing expectations in natural capital/ecosystem services provided, it may require us to rethink how we balance this against the societal benefit of water abstraction in the way we allocate water. Potential changes due to climate change should be included in this to ensure any changes to policies are resilient to future pressures. This will involve an extensive, international review of both published and grey literature, building on previous work including the Environment Agency's Systematic Review<sup>9</sup>. The new review needs to cover all approaches to environmental water needs, drawing on environmental and social science. It should consider alternative approaches, different types of catchments, different water sources, different environmental indicators/objectives including different target species and different or changing climatology. It should also consider the potential for including water quality assessments.

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<sup>8</sup> <https://www.gov.uk/government/publications/25-year-environment-plan>

<sup>9</sup> Environment Agency. Internal Report (will be made available at the project inception meeting). Systematic evidence review – EFI

From the literature review, the project team will identify what approaches are already available, if and where they are in use and what, if any, gaps remain in our understanding. The team will then explore the findings and test with stakeholders which approaches demonstrate the greatest potential. The tests could include, but not be limited to, structured interviews and/or workshops. The goal is to gather feedback on the proposals in order to make recommendations for future methodologies. The exercise should also explore with stakeholders, their expectations of what the future water environment should be. Questions to include but not limited to, should the future environment be the same as the past or should it be allowed to change with the climate and society? Are there features that we can permit to change and others that we can't? To what extent should any new approach be applied universally or should an element of prioritisation of water sources be applied? Do target objectives work in a changing climate? What would we need to do to maintain the current environmental allocation?

### **Added Requirement to the Approach**

The Authority will evaluate the Bids on Fixed Cost based on all five (5) Task stated in the Methodology, however the Authority has the discretion to terminate the Contract by enacting the break clauses following the output of Task 1, 2 and 3 subject to the Authority's business needs.

The Tenderers are hereby notified that all costs within the Commercial Workbook must be analysed/broken down per Task to enable the Task to be evaluated.

## **6.0 Methodology**

### **Task 1: Literature review of the hydro-ecological science that is used to assess environmental need.**

Undertake an international review of both grey and published literature on the current state of scientific understanding of environmental water needs for different water body types and/or different water resource basin management in light of the present day and future climate change scenarios.

Identify gaps in this evidence base, including examples of environmental need assessment in rivers, lakes, groundwater and wetlands.

- 1.1 Undertake a structured evidence review
- 1.2 Identify gaps and uncertainties in the evidence
- 1.3 Report on the findings

### **Task 2: Review of different approaches applied internationally and the extent to which they are based on the scientific understanding from Task 1.**

- 2.1 Review different approaches used in internationally
- 2.2 Critically appraise how applicable these approaches could be to England and Wales

**There will be a break in the Contract after satisfactory completion of the requirements (Tasks 1 and 2). The Authority will analyse the outcomes and determine if there is a requirement to continue with the Contract.**

### **Task 3: Stakeholder testing of results from Tasks 1 & 2.**

Test the appropriateness of the most promising approaches identified and explore what stakeholders' expectations of the different options are, with regards to:

- maintaining the services of our rivers, lakes, groundwater and wetlands
- the impact of different approaches on options for abstraction

Stakeholders include, but are not limited to, Sewage and Water Companies, Ofwat, Ecological and Hydrological Consultancies, and abstractors.

- 3.1 Gather feedback on proposals at workshops and/or structured interviews
- 3.2 Make recommendations on approaches and document stakeholder expectations
- 3.3 Report on the findings

**There will be break in the Contract after satisfactory completion of the requirements (Task 3). The Authority will analyse the outcomes and determine if there is a requirement to continue with the Contract.**

#### **Task 4: Model two to three approaches to understand environmental water need.**

Use outputs of Task 1, 2 and 3 to illustratively model one to three recommended approaches to account for how much water the environment may need in future climate change scenarios, according to water body types and/or different water resource basin management. The illustrative modelling will be undertaken in 3-5 catchments, for example undertaken as a spreadsheet-based water balance task. The approaches will account for how much water does the environment need to enable environmental resilience in a changing climate/to enable the environment to adapt.

#### **Task 5: Produce science reports, technical guidance and supporting information.**

Summarise the findings of all tasks and draw conclusions about the appropriateness of different approaches to assessing environmental needs.

- 5.1 Produce a final report (following feedback from the Project Steering Group) that amalgamates the interim reports from the separate tasks and includes conclusions and recommendations
- 5.2 Create an evidence compendium
- 5.3 Present the final output at a dissemination event

### **7.0 Required Knowledge and Expertise**

The skills and experience required include, but are not limited to:

- Hydroecology, hydrology and climatology of the UK
- Climate change impacts and other resource pressures on hydrological systems
- Literature reviews and social science research methods
- Environmental Flow Indicator (EFI) method
- Understanding of water policy context such as Water Framework Directive (WFD) Good Ecological Status (GES)
- Network of contacts and sources of data and information throughout the UK
- Familiarity and/or experience internationally
- Excellent report writing and presentation for meetings/workshops

The Contractor shall only use people in delivery of the work who are suitably experienced. We recognise the specialist nature of the skills required and we encourage due consideration to the best way of providing the necessary expertise. We would accept proposals from well-balanced consortiums.

The Contractor can expect assistance from various Defra and Environment Agency officers to access records.

## 8.0 Programme of work

Specific deliverables will be required from the successful tenderer during the course of this project.

We envisage the tasks will be delivered as separate activities, but with the potential for elements of the different tasks to be undertaken in parallel.

Below are detailed the key deliverables and milestones within the project:

<b>Project Deliverables &amp; Milestones</b>	<b>Detail of Task</b>	<b>Responsible Party</b>	<b>Dates (week commencing)*</b>
Deliverable 1	Meeting to discuss the proposed approach to the project.	Steering Group & Contractor	3 <sup>rd</sup> August 2020
Deliverable 2	A project plan sent to the Project Manager, following commissioning and the inception meeting between Defra and the successful Tenderer.	Contractor & Project Manager	17 <sup>th</sup> August 2020
Deliverable 3	Set up a project Steering Group.	Contractor	17 <sup>th</sup> August 2020
Deliverable 4	Meeting with Steering Group to discuss project plan. Agreement of project plan by Project Steering Group.	Steering Group & Contractor	24 <sup>th</sup> August 2020
<b>Milestone 1</b>	Interim report of Task 1 for comments/agreement by the Steering Group. This should contain an executive summary, overall conclusions and recommendations.	Contractor Steering Group to review	19 <sup>th</sup> October 2020
<b>Milestone 2</b>	Interim report of Task 2 for comments/agreement by the Steering Group. This should contain an executive summary, overall conclusions and recommendations.	Contractor Steering Group to review	16 <sup>th</sup> November 2020
Deliverable 5	Draft final report combining the interim report produced for Milestone 2 and 3.	Contractor	30 <sup>th</sup> November 2020
<b>Milestone 3</b>	Interim report of Task 3 for comments/agreement by the Steering Group. This should contain an executive summary, overall conclusions, recommendations and workshop findings and supporting material.	Contractor Steering Group to review	21 <sup>st</sup> December 2020
<b>Milestone 4</b>	Illustrative model from Task 4 for review by the Steering Group.	Contractor Steering Group to review	15 <sup>th</sup> February 2021
Deliverable 6	Final report combining the interim reports from each of the 4 tasks.	Contractor	22 <sup>nd</sup> March 2021
Deliverable 7	Draft 2 page summary of the research and evidence compendium. The evidence compendium will be easy to navigate and be in an impactful	Contractor	1 <sup>st</sup> March 2021

	style. It will be laid out in a similar to the Future Farming compendium <sup>10</sup>		
Deliverable 8	Final 2 page summary of the research and evidence compendium.	Contractor	8 <sup>th</sup> March 2021
<b>Milestone 5</b>	Final report combining interim reports from Milestones 1, 2, 3 and 4, 2 page summary and evidence compendium signed off by the Steering Group.	Contractor Steering Group to review	15 <sup>th</sup> March 2021
<b>Milestone 6</b>	Presentation of research at a dissemination event. This may include a presentation and virtual dissemination of the 2 page summary and/or evidence compendium generated during the project. The event will be half day with approx. 30 attendees including Advisory Group members, hosted at Defra.	Contractor	29 <sup>th</sup> March 2021

\* Dates for week commencing will be confirmed in the inception meeting.

**Financial Arrangement:** The Contractor will be paid by invoice following satisfactory completion of the Milestones as set out above.

Defra ask the Contractor to allow time and cost for three face-to-face meetings with the project Steering Group to discuss progress and agree future scope. These include, one face-to-face meeting for the inception meeting, one to discuss recommendations after Task 3 and the other to present and discuss the final results. The Contractor will need to allow time and budget for communicating with stakeholders, including workshops, meetings and interviews.

All deliverables are to be submitted in draft to Defra and the Environment Agency for review and comment, prior to approval. All reports must be produced in accordance with Defra templates for publications<sup>11</sup>. Reports should be submitted in electronic form in MS Word format (in draft), PDF documents (once finalised), MS Excel spreadsheets and MS PowerPoint presentations.

During the course of the project, the Contractor will also provide the Project Manager with a brief monthly progress report outlining progress to the Programme. All deliverables are expected to be shared with the Project Manager by email except for meetings and presentations which require face-to-face meetings.

To disseminate this research more widely it may be appropriate to develop a number of journal papers and/or conference presentations/posters. Preparation of such articles will be subject to review and approval by Defra and its partners (Environment Agency, Welsh Government and Natural Resources Wales) in every case. Draft reports, and communications materials (including any press releases) will be subject to

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<sup>10</sup> A guide to how create an evidence compendium in this manner is accessible [here](#).

<sup>11</sup> The Authority will share the Templates with the successful Tenderer at the Project Inception Meeting. Reports published using Defra Templates can be found on Science Search. For example, **see FD2712**: <http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=20114&FromSearch=Y&Publisher=1&SearchText=FD2712&SortString=ProjectCode&SortOrder=Asc&Paging=10#TimeScaleAndCost>

comments and sign-off by Defra.

Defra may require the final report to be peer reviewed by an external peer reviewer/s. The Department will identify and co-ordinate the peer review but the successful Contractor will be expected to respond to comments and revise outputs accordingly. Bidders should therefore accommodate responding to peer review comments in their proposals.

## 9.0 Governance

A Steering Group will be set up to steer direction of the project and to provide technical quality review.

Role	Responsibility
Sponsor	Head of Floods and Water, Defra Head of Water Resources, EA
Executive	Head of Research, EA
Project Manager	Principal Scientist Climate Change
Delivery Team	Security of Supply Manager Policy Lead, Defra Floods Research Manager, Defra Senior Advisor Sustainable Abstraction, EA Principal Hydrologist, EA Principal Hydro-ecologist, EA Natural Resources Wales

The Project Manager will act as the main point of contact for matters relating to the delivery of this contract. Appropriate escalation routes to senior managers to be included in the project bid to mitigate risk of delivery issues. The project will be managed on behalf of Defra by a Principal Scientist, in Research, Analysis and Evaluation: Climate Change and Resource Efficiency Environment and Business Directorate, Environment Agency. The Project Manager will coordinate an internal project Steering Group to review the work and ensure it meets project objectives. Meetings have been incorporated into the Programme of work to discuss progress and to ensure timely support and data provision as required.

A Steering Group will guide the project. The Steering Group will monitor progress and provide advice, support and guidance on project scope, methodology, policy focus and research outputs. Tenderers should cost (half days) for up to three meetings, including travel time, preparation and producing outputs from the meetings. This will include an inception meeting and further meetings to coincide with key project outputs (e.g. as detailed in the deliverables). The meetings will usually be held over Webex and in Defra offices in central London.



## UK Centre For Ecology & Hydrology Tender Response

### E01 Organisational Experience, Capability and Resources

The consortium for this tender includes the UK Centre for Ecology & Hydrology (UKCEH) as the main contractor with Atkins, British Geological Survey (BGS), Vivid Economics, and [REDACTED] (UKCEH Fellow and independent consultant) as sub-contractors.

The UK Centre for Ecology & Hydrology (UKCEH) is an independent, not-for-profit research institute carrying out excellent environmental science with impact. Our 500 scientists work to understand the environment, how it sustains life, and the human impact on it. We provide the data and insights that governments, businesses and researchers need to create a productive, resilient and healthy environment. Scientific curiosity, integrity and transparency are at the heart of how we work.

#### Experience with structured reviews:

Detailed information are provided below for five relevant projects that were completed by members of the consortium within the last five years:

- 1) Under a framework agreement with Defra, UKCEH ran the Water Evidence Review Centre (WERC), the objective of which was to provide evidence-based reviews on a variety of scientific questions. WERC used to follow Defra's review guidelines, which UKCEH contributed to (e.g. Collins *et al.*, 2015).
- 2) UKCEH, Atkins and [REDACTED] (then at UKCEH) carried out a structured evidence-based review on flow alteration and river ecology for the Environment Agency (Newman, *et al.*, 2016).
- 3) Atkins evaluated whether catchment management makes a difference to water quality and quantity, on behalf of UKWIR. They carried out a structured evidence review and interviews of key catchment stakeholders to better understand the effectiveness of different types of measures and delivery mechanisms (UKWIR, 2019).
- 4) Atkins carried out the Defra funded project titled 'Rivers Flows for Good Ecological Status: A Systematic Review to Support Water Abstraction Reform in England and Wales'. It supported the UK Technical Advisory Group (TAG) in developing standards for flow regimes to characterise hydrological status.
- 5) Vivid conducted a review of international evidence on the potential for various models of competition to improve the resilience and affordability of water and wastewater services in England and Wales, accounting for interactions between the sector and complex natural systems. This work for Defra involved in-depth literature review and interviews with key water sector stakeholders.

Other examples of relevant reviews successfully carried out by the consortium, or part thereof, include a systematic review on trees and flood (Stratford *et al.*, 2017) and a literature review on flow and river habitat for the Scotland's Centre of Expertise for Waters (Edwards and Laize, 2017). Currently, UKCEH capitalises on its reviewing expertise by running external trainings on evidence synthesis (curriculum includes structured reviews) for academia, consultancies, governmental bodies, etc.

#### Experience with stakeholder engagement:

The consortium has collectively extensive experience with stakeholder engagement, including prior collaborations on such events. UKCEH delivered a series of stakeholder workshops and public events under the NERC Drought & Water Scarcity programme (e.g. About Drought Download, 7<sup>th</sup> November 2019 London). The consortium partners' respective collaborative and contact networks cover the main actors in the field from the international environmental science community (e.g. past and current collaborations between UKCEH and groups in South Africa, Australia, North America) to long-term working relationships with statutory agencies, Defra, and the private sector.

## Experience with modelling:

Regarding the capability to implement different models and approaches (Task 4), UKCEH has state-of-art computer facilities, and the in-house skills to handle datasets, develop bespoke models or software, and to run third-party packages on most existing systems. For example, UKCEH just released an R-based implementation of an environmental flow assessment method sharing commonalities with the EFI approach (Laize and Thompson, 2019) and re-developed an existing third-party hydro-ecological method into bespoke code for hydro-power impact study in Malawi (research commissioned by World Bank in 2018-19).

## Resources:

UKCEH has access to the main electronic scientific literature searchable databases (e.g. Thomson Web of Science) as well as appropriate software to handle references in a robust manner (e.g. Endnote). UKCEH also possesses an extensive physical and digital library of reports, textbooks, etc., which covers a significant amount of the grey literature. It also has access to a communication team, which can support with tasks like evidence compendium and stakeholder engagement.

## References:

Related to relevant projects 1 to 5:

Collins, Alexandra; Coughlin, Deborah; Miller, James; Kirk, Stuart. 2015 The production of quick scoping reviews and rapid evidence assessments: a how to guide. Joint Water Evidence Group, 63pp.

Newman, J.R.; Atherton, L.; Webb, G.; Gill, A.; Williams, H.; Creer, E.; Johnson, H.; Cox, B.; Edwards, F.; Soley, R.; Duenas, M.A.; Laize, C.; Acreman, M.C.. 2016 Does an artificial alteration of flow caused by abstraction, impoundment or discharge change ecology in British rivers? Wallingford, NERC/Centre for Ecology & Hydrology, 99pp. (Internal release only)

UKWIR (2019) Catchment Management for water quality and quantity: A review of evidence to help understand whether catchment management makes a difference to water quality and quantity. Report Ref No. 19/EQ/01/17

### *Additional References:*

Edwards, Francois K.; Laize, Cedric. 2017 Investigating the sensitivity of river wetted habitat to changes in flow: a literature review. Wallingford, Oxon, Centre for Ecology & Hydrology/CREW, 33pp.

Laize, C.L.R.; Thompson, J.R. (2019). R implementation of the Ecological Risk due to Flow Alteration (ERFA) method. NERC Environmental Information Data Centre. <https://doi.org/10.5285/98ec8073-7ebd-44e5-aca4-ebcdefa9d044>

Stratford, C.; Miller, J.; House, A.; Old, G.; Acreman, M.; Duenas-Lopez, M.A.; Nisbet, T.; Burgess-Gamble, L.; Chappell, N.; Clarke, S.; Leeson, L.; Monbiot, G.; Paterson, J.; Robinson, M.; Rogers, M.; Tickner, D.. 2017 Do trees in UK-relevant river catchments influence fluvial flood peaks?: a systematic review. Wallingford, UK, NERC/Centre for Ecology & Hydrology, 46pp.

## E02 - Understanding Projective Objectives

## Understanding of the rationale and context for the project

The majority of countries around the world recognise the need to balance water resources used for public supply, industry and agriculture with environmental protection through the provision of environmental flows. This is defined by the Brisbane Declaration (Arthington *et al.*, 2018) as *the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well-being that depend on these ecosystems*. To achieve environmental flows in England, water abstractions have been estimated using the Environmental Flow Indicator (EFI) approach (Environment Agency, 2013) employing a percentage deviation from the natural river flow represented using a flow duration curve (UKTAG, 2008; Acreman *et al.*, 2008). This does not fully embrace flow timing issues. Furthermore, the focus is on minimum flows (i.e. maximum abstractions) and does not incorporate the concept that too much water at the wrong time can be as damaging as too little water.

The objectives are to meet the requirements of the European Water Framework Directive and are based on maintaining or restoring ecological characteristics of rivers e.g. close to reference conditions in the case of most common objective Good Ecological Status. Defining environmental flows from impoundments is based on building block approach (UKTAG, 2013; Acreman *et al.*, 2009a) which considers flow hydrograph shape, timing and maximum flows. Many of the water bodies where this would be applied are required to meet Good Ecological Potential.

In some cases, the flow regime required to meet the Water Framework Directive (WFD) may be different from the flow regime required to meet other objectives. For example, the semi-natural ecosystem of some Chalk rivers are unlike reference conditions because of centuries of human actions but have been designated under the Habitats Directive.

A further key issue with focusing on reference ecological conditions is that the flows they require may not be achievable under future climates. Furthermore, climate change may produce hybrid or novel riverine ecosystems, such that the only option may be to design flow regimes to meet some other agreed more realistic objective (Acreman *et al.*, 2014).

The Water Framework Directive is applied equally to all water bodies. In Sweden, it has been recognised that achieving environmental flows on rivers with major hydropower schemes may require building additional schemes to maintain electricity supplies, thus increasing total environmental impact. An alternative strategy is to identify 'working' rivers with different flow standards that permit other rivers to be more securely protected.

In some countries, such as South Africa, the objective is not fixed in advance, but environmental flows are negotiated from a series of possible allocation options through consultation with stakeholders. This enables the trade-off with wider values of the water environment, such as social and cultural issues, to be considered alongside biodiversity and water for public supply, industry and agriculture. It more fully embraces the well-being aspects of the Brisbane Declaration by incorporating ideas of ecosystem services and natural capital.

The concept of environmental flows has been widened to 'environmental water' (Horne *et al.*, 2017) to embrace systems dominated by water level rather than flow, such as wetlands and groundwaters. In Australia, for example, water allocations for floodplain wetlands are a key component of water management.

EFIs indicate where abstraction pressure may start to cause an undesirable effect on river habitats and species. This is based on the notion that the natural flow regime is the optimum for the river ecosystem. However, there are many examples of healthy rivers with altered flow regimes demonstrating the robustness of some species.

EFIs do not indicate where the environment is damaged from abstraction. This is particularly important during droughts where alterations to river ecosystems may be observed, such as dead fish or plants. In such cases it is difficult to separate natural from anthropogenic impacts and abstraction may be considered undesirable ecologically, although it is essential for human health. EFIs do not consider the natural recovery of freshwater ecosystems after droughts, which may be a more critical time to apply abstraction restriction than during the drought itself.

## Understanding of the key issues and challenges

This project aims to broaden our understanding of the wide range of possible approaches to measure environmental water needs. A key first step is to undertake a review of our current knowledge of the relationship between water resources and the condition of the environment. In doing this it will be important to separate the response of ecosystems to natural changes in the hydrological regime, such as floods and droughts, from ecosystem changes resulting regime alterations caused by human actions such as abstraction or impoundment. For example, under natural regime variations some years, such as when floods are common, will be good for some species, whilst others species may thrive in dry years. Over the course of time, conditions will be suitable for a wide range of species. Abstractions and impoundment tend to cause semi-permanent regime shifts that are not as suitable for indigenous species but may be ideal for invasive aliens. Research on ecosystem responses to natural variations is more common and care must be taken if lessons are used to infer the likely response to anthropogenic changes. Additionally, more research has been undertaken on risks to/impact on the environment of insufficient water, with less on the impacts of too much water at the wrong time.

Ideally, scientific knowledge would come from UK research studies, or from similar environments such as north-west Europe as these would be directly applicable. Considerable recent research has been undertaken in the USA (such as on re-naturalising flow regimes by dam removal – Orr *et al.*, 2008), Australia and other countries, but here the freshwater ecosystems are different from those occurring in the UK, making extrapolation to UK conditions challenging.

Combining water quantity and quality into a unified approach is a great aspiration but little progress has been made on this. Water quality standards exist for example for phosphorus (Mainstone & Parr, 2002) and critical levels of suspended sediment concentrations and exposure times have been identified for lotic, lentic, and estuarine fish, and their life stages (Newcombe & Jensen, 1996). Potential direct links include the effect of heavy metals, such as copper (Dethloff *et al.*, 1999), on muscle function in fish that affects swimming speed and thus river flow requirements. The literature may contain other avenues.

Different approaches have been developed to assess the environmental water need for level-dominated freshwater systems such as wetlands and groundwaters. Water level requirements have been defined for lowland wetland plant communities in the UK (Wheeler *et al.*, 2004). A key opportunity exists to integrate water needs of different freshwater systems wetlands and rivers.

Projected climate change in England and Wales is likely to have a direct effect on river ecosystems through temperature rise (Clews *et al.*, 2010) and indirectly through changes to flow regimes and water quality (Wilby *et al.*, 2006). Furthermore, predictions of reduced summer rainfall and increased summer evaporation will put stress on wetland plant communities in late summer and autumn with greater impacts in the south and east (Acreman *et al.*, 2009b). Potential strategies vary from accepting ecosystem change and defining objectives based on climate change projections or, for example, using infrastructure, such as releases from dams or stream flow support from groundwater pumping to maintain current water regimes. Floodplain watering is now being used in Australia to conserve wetlands using less water than be needed by natural floodplain inundation (Jensen *et al.*, 2008).

Some approaches to environmental water assessment are linked strongly to their institutional and legal settings. For example, in Australia, an allocation of environmental water is owned by the Commonwealth Environmental Water Holder. The suitability of such approaches for England and Wales would need to be assessed in the context of our water management processes such as water company AMPs. They would also need to be complementary to policy concepts. For example, much of our debate about the management of the natural environment uses the language of natural capital, but other concepts such as ecosystem services, livelihoods or poverty reduction are used overseas. Practical issues need to be considered to ensure that any recommended approach is operational as well as scientifically sound. Many existing dams have restricted release capability and may be in remote locations. It may be difficult for abstractors to change water takes at short notice and repeated at short intervals. The accuracy of low-flow measurement may in some cases make some approaches difficult to operationalise (Neachell & Petts, 2019).

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## E03 Approach and Methodology

### Task 1: Literature review of the hydro-ecological science that is used to assess environmental need.

We will review grey and published international literature on the current state of scientific understanding of environmental water needs for rivers, lakes, wetlands, and groundwater ecosystems. Review work will include approaches to water resource management in the context of current and future climate change scenarios.

The published literature will assemble knowledge from previous reviews, meta-analyses, field case studies, field manipulations and mesocosm experimentation. Grey literature (ie information produced on all levels of government, academia, business, etc., which is not controlled by commercial publishing) plays an important role in evidence-based structured reviews to avoid publication bias. We will consider, for example, external and internal reports, dissertations, conference proceedings, technical and commercial documentation produced by water companies, government agencies and environmental consultancies. Published sources include peer-reviewed scientific papers listed in scientific databases (either original papers or review papers). We know from the 2015 review that the Environment Agency has many unpublished studies.

Capitalising on the consortium's previous experience with structured evidence reviews, this project will follow key principles from the Collaboration for Environmental Evidence (CEE) Guidelines, Defra guidance for evidence reviews (Collins *et al.*, 2015) and additional guidance produced by the Defra-funded Water Evidence review Consortium when [REDACTED] (Acreman *et al.*, 2017). We also plan to draw on using the PRISMA 2009 recognised standard (search process and reporting in diagrammatic form). These methods aim to make reviews transparent, repeatable, objective, and easy to interrogate/ update.

The evidence review strategy will be discussed and agreed with the project steering group during the inception stage. One key stage in structuring such reviews is to define its protocol (search terms, inclusion and exclusion criteria of references, etc). We plan to run a facilitated session during the first Steering Group meeting to fully agree with the issues, questions, search protocols and inclusion/exclusion criteria.

Key elements will be a conceptual model that brings together our understanding of the issues and goals of the work. This can then be used to define the Population, Intervention, Comparison and Outcome (PICO) framework that will drive searches, screening and data extraction. To illustrate briefly, a starting point could be the criteria UKCEH and Atkins used for a systematic review for the Environment Agency (Newman *et al.*, 2016; internal report only) as in Table 1.

Table 1. Definition of components of the primary systematic review question (from Newman *et al.*, 2016)

<b>The primary question: Does an artificial alteration of flow caused by abstraction, impoundment or discharge change ecology in British rivers?</b>			
Population	Intervention	Comparator	Outcome
British Rivers  Or  Rivers in similar hydro-ecological zones around the world	Any artificial intervention resulting in a measured / modelled change of flow	"Natural"  Or  Pre-existing flow regime	Observable change in river ecosystem

The primary question for the present tender is considerably wider in scope. So, in this case, the population will need to be extended to include wetlands, lakes and groundwaters (and other freshwater ecosystems as appropriate). Similarly, the intervention and comparator would need to be extended to water regimes, rather than flow regimes and outcome extended to other freshwater ecosystem, not just rivers. The population could also be extended to include studies beyond those in similar hydro-ecological zones. The advantage would be a wider collection of studies and more science, but the disadvantage would be that the certainty of knowledge concerning freshwater ecosystems on England and Wales would be lower.

Weightings (Norris *et al.*, 2012) are used in reviews to differentiate between evidence of different confidence. Weighting may be applied according to study design type, length of data records, degree of peer-review, etc. In this way, studies from environments most like England and Wales could be given the highest weight in any analysis. The intervention and comparator could also be altered to include studies that investigate the ecological response to natural change in water regimes. However, extrapolating their findings to water regimes altered anthropogenically could be highly uncertain and so would need to be set within a risk-based framework.

We will employ internationally-recognised databases and search engines (for example, Web of Science, Scopus, Jstor), checking that searches return consistent pools of references. We will seek grey literature from the Environment Agency and other agencies and organisations. Using these sources, we will extract relevant data from all documents passing the inclusion criteria to build a full knowledge base. We will undertake an independent assessment of document subsets to check the consistency of inclusion/exclusion and data extraction. We will then produce a synthesis of the extracted scientific evidence that underpins water resource management. This will focus on science that can define environmental water needs and support water resource management approaches. We will classify research according to where it links ecosystems directly to environmental water (flow or level) or indirectly (e.g. through water quality or sediment) and its links to other wider ecosystem services or natural capital (including aesthetics, social-cultural issues and human wellbeing), captured in emerging thinking around net environmental gain.

The review will also investigate:

- (i) The effects of multiple stressors acting along flow, for example, morphology, water quality, channel management, riparian land use;
- (ii) How climate change is/ could be integrated to environmental water need approaches re climate resilience and adaptation.

We will identify gaps in this evidence base, including examples of environmental water need and recommend how risk-based approaches can be used where evidence is weak.

UKCEH will take the overall lead on Task 1 while all partners will contribute to designing the search strategy, protocol, search terms, etc., and to the reporting, according to their respective domain of expertise. The basic literature search will be split between scientific literature (UKCEH to lead) and grey literature (Atkins to lead), as we operated successfully for the Newman *et al.* (2016) review. Furthermore, the review will be split by theme led by partners according to their expertise (main contributors indicated within parentheses): rivers (UKCEH/ Atkins); lakes (UKCEH/ Atkins); wetlands (Prof Mike Acreman/ UKCEH); groundwaters and groundwater-dependent ecosystems (BGS); water resources/ socio-economics (Vivid).

## **Task 2: Review of different approaches applied internationally and the extent to which they are based on the scientific understanding from Task 1.**

For rivers alone, Acreman and Dunbar (2004) listed c. 200 methods to assess or set environmental flows. However, methods can be grouped by families based, for example, on their underlying scientific concepts, the type of data (hydrology, hydraulic, biology) or aspects of the ecosystem being scrutinised (habitat, functions), or their technical complexity (eg spreadsheet analysis of historical data vs hydraulic modelling requiring intensive field surveys).



Task 1 will inform the review of approaches by gathering information allowing us to assess (i) the scientific merit of each approach and (ii) the practicality of implementing such approach from a policy/operational perspective. The data extracted from the literature during Task 1 review will allow, for example, to answer the following questions regarding an approach:

- What are the target water bodies (e.g. rivers only, rivers and wetlands)?
- What type of input data is required?
- What type of output data is generated (e.g. quantitative, or qualitative)?
- Is this a research or an operational tool?
- What are the core concepts of the approach?
- How adaptable is it to alternative objectives, contexts and policy settings?
- What is the geographical scale of the approach (e.g. site, reach and catchment) and what elements need calibration with local data?

We will use this information to categorise each approach based on how robust they are in terms of science/ evidence, and how practically and realistically they can be implemented a priori (Task 4 will answer specifically this point for the selected approaches), and how different or similar are the approaches. Depending on guidance from the Steering Group, we will consider both approaches similar to Environmental Flow Indicators (EFIs), such as those based on fixed objectives, those that allow different objectives for different river basins and tributaries and those that build consensus from a choice of options and incorporate wider environmental values, such as social and cultural principles.

The information extracted from the references reviewed in Task 1 will thus allow us to rank approaches, particularly relative to currently used approaches like EFIs, and select a pool of potential candidate approaches for Task 3 and 4. For these pre-selected approaches, we will seek further technical understanding of the approaches, for example user guidance, software manuals, software testing (for approaches already implemented programmatically), analysing code (for approaches with open-source software).

We will contact the consortium's large network of relevant institutions and experts around the world (eg IUCN's eflownet). We are aware of interesting approaches being developed and applied in South Africa, Australia, Costa Rica, Mexico and elsewhere. We will review different approaches used internationally and critically appraise how applicable these approaches could be to the UK, and will recommend how they might be adapted to suit our environmental conditions, policies and practices.

As per Task 1, UKCEH will take the overall lead with all partners contributing their respective expertise; in-depth analysis of the approaches will be split between partners accordingly.

We understand there will be a break in the Contract after satisfactory completion of the requirements (Tasks 1 and 2), while the Authority analyses the outcomes and determines if there is a requirement to continue with the Contract.

### **Task 3: Stakeholder testing of results from Tasks 1 & 2.**

Given the scale of the project, we plan to engage stakeholders via one workshop (held in a central location with convenient transport) complemented with additional activities such as webinars, structured telephone interviews, and/ or questionnaires for stakeholders who would not be able to attend. The consortium has extensive experience with organising and running stakeholder events (from small technical workshops to large dissemination meetings like About Drought Download, November 2019 involving UKCEH and BGS), including facilitating.

We will perform the stakeholder analysis technique consisting of mapping individuals and/or organisations with high interest and/or high influence in the project outcomes. We will then capitalise on our respective networks (both the consortium and Defra) to draw a suitable list of invitees. These would include the following key stakeholders:

- Water companies and water resource planners e.g. Water Resources in the South East
- Regulators including Ofwat, Environment Agency, and the Drinking Water Inspectorate
- Major abstractors such as the National Farmers' Union and industrial/energy sector users

- Academics and consultants.

UKCEH will manage the event logistics with all partners contributing to the stakeholder event (at least one representative per partner), and the additional activities with Vivid advising.

We understand there will be a break in the Contract after satisfactory completion of the requirements (Tasks 3), while the Authority analyses the outcomes and determines if there is a requirement to continue with the Contract.

#### **Task 4: Model two to three approaches to understand environmental water need.**

We will capitalise on our in-depth modelling expertise. UKCEH own state of the art hydrological and ecological models and we have the infrastructure and in-house skills to develop new models, or to emulate other modelling approaches (from national-scale hydrological models like Grid-to-Grid to site-scale habitat suitability models like RAPHSA).

To retain flexibility in terms of approach implementation and consistency in terms of end-user visuals, we are planning to use the R platform to perform data processing and complex computing tasks, coupled with spreadsheet-styled or webpage-styled outputs for end-user interaction and dissemination. This is an approach we have taken in many applied research projects, for example, for a recent environmental flow studies in Africa, where we emulated the Downstream Response to Imposed Flow Transition (DRIFT, King *et al.*, 2003) approach, which produces scenarios for optimum use of water, including defined environmental water volumes. DRIFT has been used extensively in Africa and Asia. We developed R code rather than using the proprietary DRIFT software, while the outputs were provided to the end-users as spreadsheets and summary tables linked to the R code raw outputs.

We will use, as far as practical, a user interface that is consistent across approaches to facilitate comparison. For example, if using an Excel workbook as the base platform, all input variables would be located in the first spreadsheet, intermediate calculations in the second spreadsheet, output metrics in the third spreadsheet, etc. A consistent colour-coding and variable naming convention would be used for all approaches (for example, all river flows called “discharge”).

The recommended approaches will be implemented on 3 to 5 test catchments. Early in the project, we will draw a list of candidate catchments, for which we know there is a wide range of datasets readily available. For example, we could capitalise on the extensive paired datasets collected at UKCEH's River Lambourn Observatory, which include abiotic and biotic variables (hydrology, hydraulics, cross-sections, groundwater levels, habitat surveys, temperatures, water quality, etc), or smaller-scale yet comprehensive studies performed elsewhere (for example, River Lowther, Plynlimon). Ideally, we would aim to include a range of catchment types (for example, urban and rural, upland and lowland) and of geographical locations. Targeting known catchments with pre-existing datasets will ensure that data availability is not excluding relevant methods that should be selected based on their scientific merit.

Depending on which approaches are selected for the illustrative modelling, UKCEH will lead the task with input from the relevant partner (for example, BGS for approaches involves groundwater components).

#### **Task 5: Produce science reports, technical guidance and supporting information.**

Task 5 comprises three components: final report (5.1); evidence compendium (5.2); dissemination event (5.3).

The final report will aggregate outputs from Tasks 1-4 and the feedback provided by the project steering group, as well as the stakeholders (as part of their engagement in Task 3). Conclusions and recommendations regarding how the different approaches are suitable for environmental water need

assessments will be drawn at this stage and clearly identified in the report. Key findings will be featured in a prominent way for ease of reference (for example, as part of the 2-page summary). As part of its Quality Assurance policy, UKCEH operates an internal peer review before reports are disseminated to customers in order to ensure a high standard of writing both with regard to form and content.

The evidence compendium will follow the guidance provided within the invitation to tender (“Future Farming and Environment Evidence Compendium” example). To design the evidence compendium, we will also capitalise on our previous experience with similar types of dissemination products, which put emphasis on synthesized key messages supported with visuals and infographics (for example, 1-page policy briefs, report cards, web pages). We will present an overview of the project, and disseminate the main outputs (for example, 2-page summary and evidence compendium) at the final event at Defra (c. 30 attendees). This task will be led by UKCEH with all partners contributing on their respective domain of expertise.

## Project Management, Quality Assurance and Risk:

UKCEH will be the lead contractor and the project will be led by [REDACTED]. The sub-contractors are Atkins, BGS, Vivid, and independent consultant [REDACTED] (UKCEH Fellow). UKCEH operates a Quality Management System which complies with the requirements of ISO 9001:2015. Our team will seek compliance with Quality standards in the execution of the project and will delegate authority over certain quality control tasks where appropriate. This will ensure that, whilst oversight is achieved for the consistency of quality in the project, appropriate experts are assuring the quality of outputs in which they have considerable understanding. All reports issued by the project will be approved by [REDACTED] and will have been subject to the UKCEH internal review process.

[REDACTED] will be responsible for project quality assurance, risks and communication. We have provided an initial risk register in E05, with mitigation actions. The table below addresses risks, which are more specific to the planned work. Our team’s expertise in this subject and track record will ensure that risks are kept to a minimum. Any concerns will be raised with DEFRA.

Potential Risk	I	L	S	Mitigation Actions
Access to scientific and grey literature	0.9	0.1	9	Duplicated resource within consortium; both UKCEH and BGS have access to scientific databases; all partners have access to open literature; consortium has collectively multiple routes to access grey literature
Inappropriate review methodology	1.0	0.1	10	All consortium partners with extensive experience with structured review methods; protocol to be defined and agreed between all partners and steering group
Inappropriate analysis/ reporting of evidence.	1.5	0.1	15	All consortium partners have extensive proven track records in research and consultancy using both quantitative and qualitative evidence
Illustrative modelling not meeting requirements	0.9	0.1	9	Very experienced modellers leading task with some skill overlap plus available advice from consortium’s experts; available back-up modelling capability within consortium
Improper organisation of stakeholder and dissemination events	0.9	0.1	9	Good project management practices and planning; consortium has experience with running similar events and back-up capability

## References:

- Acreman, M.C. 2017 Additional guidance on undertaking evidence reviews Report to Defra of the Water Evidence Review Consortium. Centre for Ecology & Hydrology.
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## E04 Proposed Project Team

As lead contractor, UKCEH will define roles and responsibilities and will oversee delivery of Partner's tasks. The Project Manager, [REDACTED] will be responsible for the management of project resources, reporting and delivery, and communications with Defra. He will be supported by project, systems and finance administrators, within UKCEH for all aspects of project management. The team will follow established project management practice (see E05) to maintain communication within the team and ensure delivery of the project.

## Project Team Members

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**Project Team Structure**

[Redacted]

## Staff Time

Table 1 Break down of staff members' time assigned to each task.

Name of Staff	Days (2020-2021)					
	Total Days	Task 1	Task 2	Task 3	Task 4	Task 5
	30	7	6	3	8	6
	23	10	5	1	1	6
	10	5	5			
	5	3	1			1
	30	10	5	5	2	8
	10	5	5			
	15				3	2
	16	5	5	3		3
	5	2	2			1
	14	5	5	1	1	2
	14	6	6			2
	6	3	1	1		1
	8	4	2			2
	20	10	8			2
	20	10	8			2
	2	1	1			
	5	2	1	1		1
	8	2	2	1	1	1
	16	5	5	4		2
<b>TOTAL</b>	<b>257</b>					

## E05 Project Management

UKCEH will be the lead contractor with Atkins, BGS, Vivid, and independent consultant [REDACTED] as sub-contractors. The Project Manager (PM), [REDACTED] (UKCEH) will be responsible for the management of project resources, project reporting and delivery, and any communications. The framework upon which the project is structured will serve to implement day-to-day delivery and facilitate a more strategic approach to the future direction and vision of the proposed service.

A planned schedule for meetings will be defined to enable effective interaction both within, and across, the tasks. There will be a designated contact point for each sub-contractor, ensuring regular communication (Skype, email, and/or phone) with the PM. The BGS contact point is also located at the same physical site as the PM. [REDACTED] is a UKCEH Fellow and also has access to UKCEH office space, thus will be managed as other UKCEH project staff. Regular project team meetings (Skype and/or phone) will take place with the invitee list adapted to meeting agenda, but systematically including at least one staff for each partner. The consortium has been assembled so that each partner brings complementing skills, but with some overlap within and between each partner. In addition, each organisation has a pool of staff able to replace part of the designated teams should the need occurs.

The Project Management Team will issue all templates and retain and track, documents associated with project planning and delivery (e.g. timetable; product descriptions; quality plans and logs, risk plans and logs; change requests etc.). Project documents and files will be shared amongst the team by means of the UKCEH SharePoint site.

## Sub-contractors

Atkins and BGS operate a Quality Management System which complies with the requirements of ISO 9001:2015. Vivid Economics operates according to ISO9001 principles and is aiming to get the certification in 2020; as a sub-contractor, it will adhere to UKCEH system. [REDACTED] as a UKCEH Fellow, will de facto operate according to UKCEH systems.

## Risk Management

The exposure to risk (the probability of a specific risk occurring and its potential impact) will be managed at project level using UKCEH's risk management and issue tracking system. The risks from within and external to the project will be identified and evaluated by the Project Board at their first meeting. Steps will be taken to reduce the level of risk. Each risk registered will incorporate a planned response and be designated an appropriate "owner" to monitor the threat.

Issues potentially affecting the delivery of the project will also be logged and communicated with Defra. The project Risk Register and Issues Log will be maintained by the Project Management Team and reviewed at every Project Board meeting. Any concerns will be raised with Defra.

## Initial Risk Register:

Potential Risk	I	L	S	Mitigation Actions
Loss of core expertise	2.0	0.2	10	Identification of successors to key individuals and short-term cover by permanent staff within consortium; pool of experts both within and external to consortium. Some built-in overlap within/ between partners.
Subcontracts not signed	0.9	0.1	9	Sub-contractors involved in tender and maintain communications with UKCEH team.
IT services disrupted	0.9	0.1	9	Very effective UKCEH back-up systems and malware protection; highly competent IT systems specialists. UKCEH is Cyber Essentials certified.
Delays in inception and/or timetable	3.1	0.25	12.5	Good project planning; effective project management & communication throughout the consortium. Timetables regularly reviewed.

Non-delivery by project partners	0.9	0.1	9	Sub-contractors selected based on track record & skills, and successful collaborations with UKCEH. Good project management: all aware of dependencies/ timescales.
Outputs do not meet requirements	0.9	0.1	9	Good project planning with quality assurance processes.
Incorrect estimates of costs/ resources	0.5	0.1	5	Rigorous approach to costing and resourcing adopted based on previous experience.
Access to literature and storage	0.9	0.1	9	Quality assurance measures/ effective project management to facilitate communication, etc. Data management plan implemented from project start.
Inappropriate methodology	1.0	0.1	10	Research follows agreed methodology; project team familiar with review methodology/ approaches and have practical experience of their use and limits.

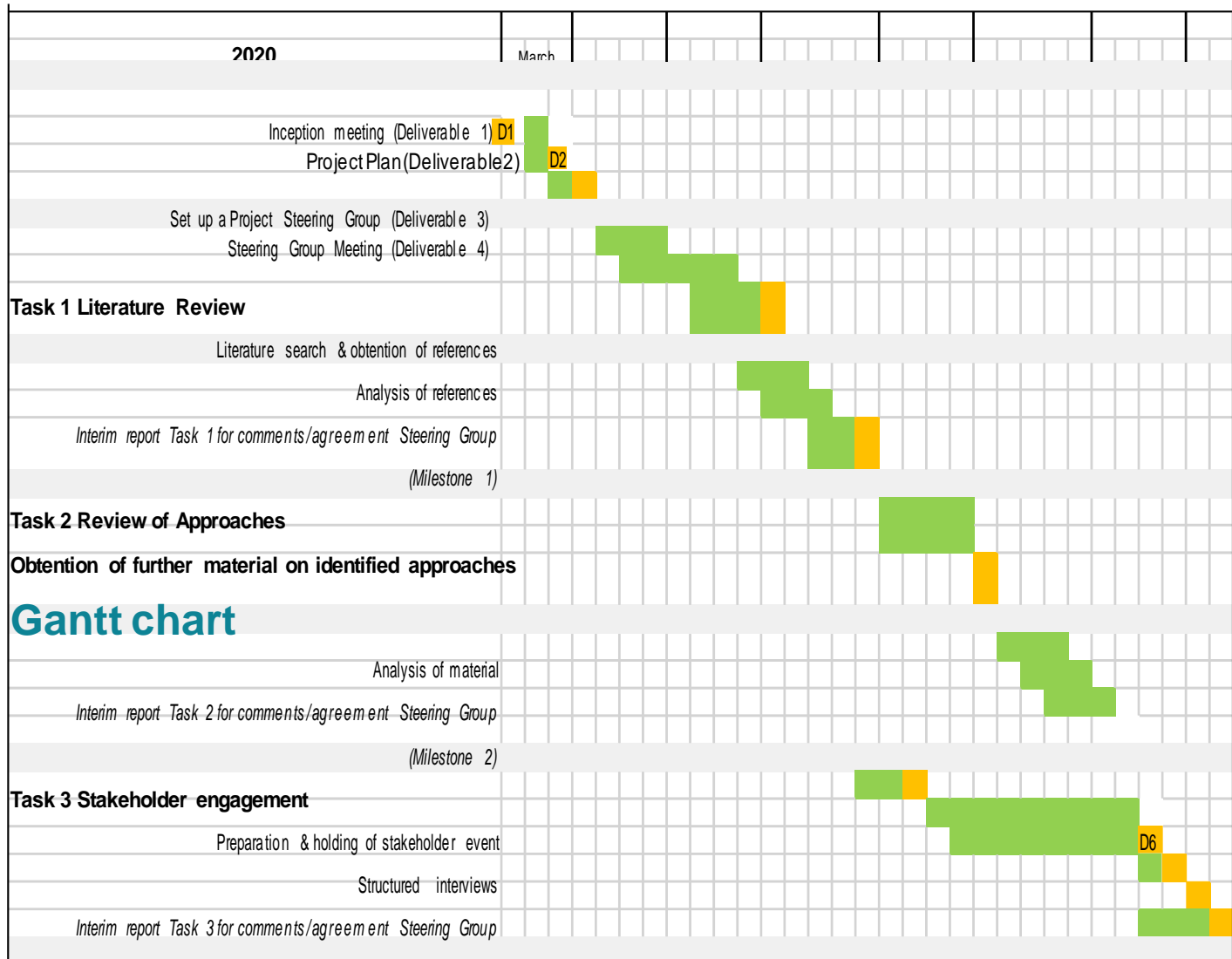


Inappropriate analysis/ reporting of evidence.	1.5	0.1	15	Experienced practitioners who are experts in the fields of research using both quantitative and qualitative evidence.
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**I = Impact, L = Likelihood, S = Severity; Probability scores:** Certain=1; Almost certain=0.9; More likely than not=0.75; Equally likely as not=0.5; Less likely than not=0.25; Not likely to happen=0.1;

**Total Risk Score (Impact Score):** >4: high degree of exposure requiring good risk management and close monitoring; 1 to 4: moderate degree of exposure requiring good risk management and regular monitoring; <1: low degree of risk and it should be monitored as appropriate

### Gantt chart



## SCHEDULE 2 – PRICING

- 1 The Authority and the Co-funders, taken together, will pay to the Contractor no more than the fixed sum of:
2. **£139,450.49, exclusive of VAT.** The total of the payments (exclusive of VAT) to be made in accordance with the Agreement, for each Financial Year, will be:

The Authority:

Year	Amount
2020/2021	100,000
<b>Total</b>	<b>£100,000</b>

The Co-funder

Year	Amount
2020/2021	39,450.49
<b>Total</b>	<b>£39,450.49</b>

Task	Target date (dd/mm/yyyy)	Description of milestone	Cost (£)
1	19 <sup>th</sup> October 2020	<b>Milestone 1</b> Interim report of Task 1 for comments/agreement by the Steering Group.	20,000.00
2	16 <sup>th</sup> November 2020	<b>Milestone 2</b> Interim report of Task 2 for comments/agreement by the Steering Group.	20,000.00
3	21 <sup>st</sup> December 2020	<b>Milestone 3</b> Interim report of Task 3 for comments/agreement by the Steering Group.	29,450.49
4	15 <sup>th</sup> February 2021	<b>Milestone 4</b> Illustrative model from Task 4 for review by the Steering Group.	40,000
5	15 <sup>th</sup> March 2021	<b>Milestone 5</b> Final report combining interim reports from Milestones 1, 2, 3 and 4, 2 page summary and evidence compendium signed off by the Steering Group.	20,000
6	29 <sup>th</sup> March 2021	<b>Milestone 6</b> Presentation of research at a dissemination event.	10,000
<b>Total:</b>			<b>139,450.49</b>

3. Subject to any variation of the Project, the amount in paragraph 1, above, shall remain firm throughout the duration of the Agreement.

4. In the event that the Agreement is varied, the amount in paragraph 1 shall be adjusted by such reasonable sum as may be agreed, in writing, between the Authority, Co-funders and the Contractor.
5. Invoices should be submitted upon satisfactory completion of the milestones stated in the table above
6. Within 30 days of receiving an invoice satisfactory to the Authority, the Authority shall pay to the Contractor the amount of the Eligible Costs which the Authority reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period.

# SCHEDULE 3 - CHANGE CONTROL

## Contract Change Note ("CCN")

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

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

IT IS AGREED as follows

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 [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annexe [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
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.

## SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]

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

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION CONFIDENTIALITY	OF

# SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

2. The contact details of the Authority Data Protection Officer are:

[REDACTED]

3. The contact details of the Contractor Data Protection Officer are:

[REDACTED]

4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.

5. Any such further instructions shall be incorporated into this Schedule.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1.
Subject matter of the processing	The project does not require any processing of personal data other than contact details of individuals working on the project and participants of workshops.
Duration of the processing	The processing takes place throughout the course of the Contract.
Nature and purposes of the processing	Storage and use of personal data.

Type of Personal Data	Names, employment addresses and email addresses of Defra and Contractor personnel, CVs, and participants of Workshops.
Categories of Data Subject	Authority and Contractor personnel, participants of workshops.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Contractor will destroy all data on termination of the Contract. The Authority will destroy all data relating to the contract, 6 years after the end of the Contract.</p> <p>Data collected by the Contractor and their Sub-Contractors, will be retained until the Contract has been formally completed. After that point, personal details will be destroyed.</p>



# SCHEDULE 6 - CO-FUNDING

## 1. PURPOSE OF THIS SCHEDULE

- 1.1 This Schedule 6 sets out additional terms to apply to the Contract where Co-funders are party to the Contract.

## 2. INTERPRETATION

- 2.1 Any reference to Co-funders shall be read in the singular where only one Co-funder is a party to the Contract.
- 2.2 Any reference to “either Party” in the Contract shall be interpreted to mean “any Party” and references to “neither Party” shall be interpreted to mean “no Party”; corresponding references to “the other Party” shall be read as “the other Parties” accordingly.

## 3. CONTRACT PROVISIONS APPLYING TO THE CO-FUNDERS

- 3.1 If the Co-funders fail to make any payment in accordance with Schedule 2 the Authority may issue a notice to the Contractor in accordance with clause A4.2 (Notices) identifying the default of the Co-funders and, without prejudice to any other rights or remedies, terminating the Contract with immediate effect.
- 3.2 Each Co-funder agrees to comply with the obligations expressed to apply to the Authority in clause C with respect to that part of the Price which is payable by the relevant Co-funder as set out in Schedule 2. Any reference to “the Authority” in clause C shall be interpreted as if it read “the Authority or the Co-funders, as the case may be”.
- 3.3 Clause E8.5 (Intellectual Property Rights) is deleted and replaced with the following:
- “E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Authority and the Crown and the Co-funders from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority, the Crown or the Co-funders (as the case may be) may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:
- (a) items or materials based upon designs supplied by the Authority; or
  - (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.”
- 3.4 The Contractor shall, in addition to informing the Authority of the matters referred to in clause F2.1 (Monitoring of Contract Performance), immediately inform the Co-funders of the same matter(s). The Authority shall pay due regard to any representations made by the Co-funders in exercising its rights under clauses F2.2 to F2.7 and the reference to “no extra charge to the Authority” in clause F2.7 shall be interpreted to mean “no extra charge to the Authority or the Co-funders”.
- 3.5 The indemnity from the Contractor to the Authority set out in clause G1.2 (Liabilities) is also given to the Co-funders, so that each reference to “the Authority” in that clause should be read as “the

Authority and the Co-funders". Accordingly, each reference to "the Authority" in clause G1.3 shall be read as "the Authority and the Co-funders".

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

