



**Environment
Agency**

Conditions of Contract Services

Document version: October 2019

**PFAS Risk Screening Project Phase 4 – GIS Model Refinement and
Application**

Contract number: [REDACTED]

1. DEFINITIONS

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

1.1.1. Agency

The Environment Agency, its successors and assigns.

1.1.2. Agency Property

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

1.1.3. The Appendix

The Appendix to these Conditions.

1.1.4. Consumer Prices Index

The Consumer Prices Index (CPI)(all items)(United Kingdom)

1.1.5. The Contract

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

1.1.6. The Contractor

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

1.1.7. Contract Period

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

1.1.8. Contractor Personnel

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

1.1.9. Contract Price

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

1.1.10. Contract Supervisor

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

1.1.11. Contracting Authority

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

1.1.12. Data Protection Legislation

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

1.1.13. Data Protection Schedule

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

1.1.14. Intellectual Property Rights

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

1.1.15. Law

means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply

1.1.16. Notice

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

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

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

1.1.17. Results

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

1.1.18. The Resulting Rights

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

1.1.19. Permission

Express permission given in writing before the act being permitted.

1.1.20. Services

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

1.1.21. Regulations

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

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

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

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

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

2. PRECEDENCE

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

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

3. CONTRACT SUPERVISOR

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

4. THE SERVICES

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

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

5. ASSIGNMENT

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

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

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

6. CONTRACT PERIOD

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

7. PROPERTY

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

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

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

8. MATERIALS

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

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

9. SECURITY

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

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

10. VARIATIONS

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

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

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

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

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

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

10.6.1. any Contracting Authority; or

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

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

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

11. EXTENSIONS OF TIME

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

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

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

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

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

12. DEFAULT

12.1. The Contractor shall be in default if he:

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

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

12.1.3. is in breach of the Contract.

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

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

13. TERMINATION

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

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

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

'Termination under the Regulations'

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

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

13.2.2. the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or

13.2.3. The Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations

that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

14. DETERMINATION

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

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

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

15. INDEMNITY

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

15.1.1. death or injury to any person;

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

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

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

15.3 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.

15.4 Neither Party shall be liable, whether in contract, tort and otherwise at law for any indirect, special or consequential loss or damage, loss of revenue, loss of profits, loss of business opportunity, loss of or damage to goodwill (in each case whether direct or indirect).

16. LIMIT OF CONTRACTOR'S LIABILITY

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

16.1.1. a sum equivalent to 300% of the Contract Price paid by the Agency to the Contractor pursuant to clause 21.1.

17. INSURANCE

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

17.2. Not used.

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

18. PREVENTION OF FRAUD AND CORRUPTION

18.1. The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or

refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

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

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

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

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

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

19. MONITORING AND AUDIT

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

20. CONTRACT PRICE

20.1. The Contract Price will be paid by the Agency to the Contractor as amended by (a) any Variations ordered under Condition 10 (Variations) or (b) Conditions 20.3 and 20.4.

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

20.3 The Contract Price may be adjusted with effect from 1st April of each year by the percentage increase or decrease in the Consumer Prices Index during the previous year or 4%, whichever is lower, as follows:

20.3.1 The Parties may agree to increase the Contract Price to reflect increases in the Contractor's direct costs of delivering the Services:

- a) up to a maximum of the percentage increase in the Consumer Prices Index during the previous year or 4% whichever is lower; and
- b) subject to the Contractor providing in writing not less than one month before the proposed change (i) notice of the proposed change to the Contract Price and (ii) such evidence as the Agency may reasonably require demonstrating the increase in the Contractor's direct costs of delivering the Services.

20.3.2 The Agency may, by written notice to the Contractor, require the Contractor to reduce the Contract Price up to a maximum of the percentage decrease in the Consumer Prices Index during the previous year.

20.4 If an adjustment to the Contract Price under Condition 20.3 is disputed, the Contract Price then in force shall continue to apply pending determination of the dispute in accordance with Condition 29. Any adjustment to the Contract Price following determination shall be deemed to apply with effect from 1st April. Within one month of the appropriate adjustment being determined, the Agency shall pay the Contractor any outstanding sums due in respect of its purchases of Services since 1st April of the relevant year, together with any applicable VAT, or the Contractor shall refund the Agency for any excess amounts paid since 1st April, and shall repay any VAT due to be repaid, as appropriate.

21. INVOICING AND PAYMENT

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

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

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

22. INTELLECTUAL PROPERTY RIGHTS

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

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

22.3. The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.

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

22.3.1. assigns to the Agency all Resulting Rights

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

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

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

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

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

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

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

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

23. WARRANTY

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

24. STATUTORY REQUIREMENTS

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

25. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY

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

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

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

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

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

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

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

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

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

25. PUBLICITY

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

26. LAW

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

27. WAIVER

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

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

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

28. ENFORCEABILITY AND SURVIVORSHIP

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

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

29. DISPUTE RESOLUTION

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

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

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

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

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

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

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

30. GENERAL

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

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

31. FREEDOM OF INFORMATION ACT

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

31.2. The Contractor agrees that:

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

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

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

32. DATA PROTECTION

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

33. BREAK CLAUSE

DEFINITION

33.1 Price – Means the price submitted by the Contractor as outlined in the pricing schedule.

33.2 Year – Means a financial year, which runs from 1 April to 31 March.

33.2 Subject to the Agency's full discretion, Year 2 shall follow the completion of Year 1 and Year 3 shall follow completion of Year 2. The Agency shall inform the Contractor by written communication, no later than 30 days prior to the start of the new Year, whether the Agency wishes to proceed with Year 2 and subsequently Year 3. The Consultant should respond within two weeks to confirm that they are

able to undertake the work defined as Year 2 and Year 3, for the price submitted in their bid, subject to any reasonable adjustments allowed in Clause 20.

34.5 Following award for Year 1, the Contractor has submitted and the Agency has accepted the supply price for Year 2 and Year 3, should the later Years be required. No costs incurred up to and for works associated with Year 2 and Year 3 shall be chargeable to the Agency, should they decide not to proceed with Year 2 or Year 3.

Appendix to Conditions Services

Ref: [REDACTED]

Title: PFAS Risk Screening Project Phase 4 – GIS Model Refinement and Application

Condition

1 Contract Supervisor

3

[REDACTED]

Address: EA Head Office
Horizon House
Deanery Road,
Bristol
BS1 5AH

2 Contractor

Jacobs UK Ltd

Address:
Cottons Centre,
Cottons Lane
London
SE1 2QG

3 Completion

6

Contract Start Date 28th November 2022

Contract End Date 31st March 2025

4 Delivery

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Address:-
Insert delivery address if different to above

5 Insurance

17

Professional Indemnity Min. Cover £1 million

Third Party Minimum Cover £1 million

Public Liability Min. Cover £5 million

6 Limit on Liability

16

Limit on Contractors Liability a sum equivalent to 300% of the Contract Price paid by the Agency to the Contractor pursuant to clause 21.1

SCHEDULE 1 – SPECIFICATION

Specification for PFAS Risk Screening Project (Phase 4)

Work Package 1:

'GIS Model Refinement and Application'

Background to the EA

The Environment EA (EA) was set up to protect and improve the environment. The EA helps people and wildlife adapt to climate change and reduce its impacts, including flooding, drought, sea level rise and coastal erosion. It also plays a key role in improving the quality of our water, land and air by tackling pollution by working with businesses to help them comply with environmental regulations. The ultimate objective is for the EA to deliver a healthy and diverse environment to enhance people's lives and contribute to economic growth.

The EA works as part of the DEFRA group (Department for Environment, Food & Rural Affairs), and together with the rest of government, local councils, businesses, civil society groups and local communities it aims to create a better place for people and wildlife.

The EA is currently working under its five-year action plan (EA2025). This plan ties in with the Government's 25 Year Environment Plan.

The plan sets out 3 long term goals:

- A nation resilient to climate change
- **Healthy air, land and water**
- Green growth and a sustainable future

Healthy air, land and water is the overarching goal for this project. By tackling land contamination through the assessment and implementation of mitigation measures where risks are deemed unacceptable, the aim is to protect and clean-up these valuable resources.

The plan states: "Unless we act now the state and condition of our natural resources will continue to decline and the ecological crisis will deepen. Failing to act is not an option. Clean air, land and water are critical for our health, sustain wildlife and provide essential services that support our lifestyles and economy. They provide the natural capital on which we all depend."

Background to the Project

This document sets out the strategy for procuring the project titled **GIS Model Refinement & Application**. This project is one of six work packages under the overarching PFAS Risk Screening Project which is now entering Phase 4.

The wider PFAS Risk Screening Project, aims to assess and tackle the risks arising from a group of “**forever chemicals**” which are contaminating soil, groundwater and surface waters and also pose a risk to human health. These chemicals are causing a global pollution problem. And the nature and scale of the problem in the UK is only now being fully realised.

Polyfluoroalkyl and perfluoroalkyl substances (PFAS) are a broad group of synthetic fluorinated organic chemicals which are extremely persistent in the environment. Some are bio-accumulative and toxic, and/or highly mobile. PFAS are a group of more than 4,700 man-made chemicals (OECD, 2018), the two most well-known of which are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS).

PFAS are used in a wide variety of consumer products and industrial applications because of their unique chemical and physical properties, including oil, water and stain repellence, temperature and chemical resistance, and surfactant properties. PFAS have been used as surfactants (including aqueous film fire-fighting foams (AFFFs), non-stick metal coatings for frying pans, paper food packaging, creams and cosmetics, textiles for furniture and waterproof outdoor clothing, paints and photography, chrome plating, pesticides and pharmaceuticals and as polymer manufacturing.

Increasing awareness of the widespread presence of PFAS in environmental media has heightened regulatory concerns about their potential risks to human health and the environment. A recent evidence review by the EA has identified large data gaps in relation to the uses, sources, and mass emissions of PFAS in the UK. This report recommends further research and investigative work to evaluate the sources both current and legacy that are contributing to the widespread nature of this family of contaminants.

In order to ensure effective allocation of resources and appropriate targeting of mitigation actions, we need to better understand the sources of PFAS, the pathways by which these chemicals can impact key receptors and the relative significance of these substances in environmental media.

Previous phases of the project have led to the development of a high-level risk screening model. This multi-layered GIS model helps to identify potential problem zones across England using a multi-criteria analytical approach to evaluate risk. The model allocates scores based on respective weightings applied to key criteria – all designed around the source-pathway-receptor type strategy.

Based on the outputs of the model, and our growing understanding of the nature and extent of the PFAS problem, under Phase 4 we intend to focus on specific facilities and zones of concern to both validate the model and target resource.

As indicated above, the PFAS Risk Screening Project is entering it's fourth phase. Below is a summary of the activities and outputs associated with the preceding phases.

Progress to Date

Phase 1 (2019/20) developed a high-level risk screening model to help identify potential problem zones across England. A multi-criteria analytical approach was adopted which resulted in the development of a comprehensive multi-layered GIS package which worked by evaluating sites based on source-pathway-receptor relationships. Weightings were allocated to specific criteria facilitating delivery of a scoring approach. This model was validated by focussing on certain industry types where these chemicals were considered likely to have been used and/or stored.

Phase 2 (2020/21) built on the outputs of Phase 1. The objective was to deliver an enhanced and more robust prioritisation model through ground truthing and the use of additional datasets. In addition, Phase 2 involved the in-depth study of the West Midlands region to help validate the model and focus in on an area with a wide variety of potential problem sites and sensitive receptors.

Phase 3 (2021/22) aimed to further the project with new studies and the enhancement of Phase 2 outputs. A key aim was to deliver a more comprehensive and user-friendly GIS model ready for wider roll-out. In addition, Phase 3 involved another regional study, this time Greater Manchester, and an assessment of the nature and scale of the problem across England. Also a comprehensive groundwater sampling exercise from a large number of landfills, case studies focussing on potential sites of concern, including a collaborative exercise with the MoD and development of training and guidance materials on this new and developing topic.

Objectives

The objective for **Phase 4** (2022/23 – 2024/25) is to build on the outputs of these preceding stages. Phase 4 has been broken down into a series of six discrete but interlinked work packages. Each work package comprises one or more sub projects. The intention being that each work package – with the exception of this work package: **GIS Model Refinement & Application** – will be competitively tendered and separately awarded.

It is the intention that this work package will be directly awarded to Jacobs under the ESPO Consultancy Service Framework (664) – Lot8b Environmental and Sustainability.

Note: while the work packages sitting under Phase 4 are being run as discrete activities, they are considered to be interlinked and will all focus on different elements of the same topic i.e. the PFAS problem. For this reason, collaboration, liaison, and the sharing of information between those responsible for each work package is vital and will be actively encouraged.

The six work packages, and sub projects, under Phase 4 comprise the following:

- 1. GIS Model Refinement & Application** (the subject of this commission)
- 2. Development of Good Practice Guidance**
- 3. Detailed Assessment of Potential PFAS Problem Sites:**
 - In-depth desk studies of highlighted problem sites
 - Site investigation of x1 prioritised site
- 4. Economic Appraisal**
- 5. Landfill Assessment:**
 - Assessment of pre and post treated leachate to evaluate PFAS component
 - Assessment of sludges produced and POPs component
 - Assessment of POPs release into groundwater from older unlined facilities

- Study of PFAS in gaseous emissions

6. Background Concentrations in Soil:

- Collaborative research project with BGS to evaluate background PFAS concentrations in soil

The focus of this work package is **GIS Model Refinement & Application**. The overarching objective is to continue to build on the outputs of the preceding phases, to act on recommendations and to refine, enhance and update the GIS model. This will be achieved using internal and external datasets and information gained from wider research and related projects.

This work package includes the continued hosting of the model on a Jacobs' platform for the duration of this project, until a time when it can be transferred onto EA systems. Ongoing liaison with the EA's Digital, Data and Technology Services (DDTS) - a key requirement of this project - will ensure the project delivers a model that is fully suitable for ultimate hosting on EA systems. The date for transfer has yet to be confirmed – but assumed to be in 2024/25 at the end of this three-year commission. Whilst wider external use is a future ambition, for the foreseeable future the model will only be available to EA staff.

The model has been designed to identify higher risk zones of PFAS impact across the Country. An added component to this work package is the evaluation of the outputs from the model with a focus on patterns and clusters of higher risk sites. To be followed by subsequent interpretation of the data highlighting any such zones of concern, endeavouring to present a hypothesis and obtain evidence for these findings and to recommend further actions to better understand the local nature and scale of the problem. Also, to provide a risk ranking on a regional basis to facilitate future regulatory focus under the appropriate regime.

Note: This work package will be run on a three-year rolling basis (2022/23 – 2024/25) with the outputs and recommendations from each year feeding into the next. Whilst the contract will be set-up and costed for three years (costings to be provided for each of the three yearly stages as separate pricing schedules), each year should be treated as a separate - but linked - stage. Each of the three stages will be separated with a contract break clause to enable review of the outputs and decisions made with regard how best to progress into the subsequent year. Stage 2 and 3 may be subject to change depending on the outputs of the proceeding stage but the activity schedule will form the basis for the required work.

The activity schedule below has been written for Year 1 (2022-23), but this pattern of tasks and deliverables is also applicable to Years 2 and 3. As indicated above, whilst Year 1 of this work package will feed off the outputs of the 2021/22 Phase 3 PFAS Risk Screening Project, Years 2 and 3 of this task will build on the outputs of the preceding year.

It should be noted that the final stages of Year 3 should facilitate transfer of the model onto EA systems. As indicated above, ongoing liaison with the EA's DDTS team will ensure the project delivers a model that is fully suitable for hosting on EA systems with an agreed timeframe for handover.

Key Deliverables

Activity Schedule

- **Task 1.** Start-up workshop to discuss the approach and refine scope

Day long workshop which will enable the EA to provide a background to the project and the overarching aims and objectives. The consultant will then present their scope of works and their understanding of the commission as well as additional thoughts for project enhancement. Data requirements / provision will be discussed and any potential overlaps with other related projects under Phase 4 where there is the potential for data and information sharing. Detailed discussion and critical evaluation of the approach will help refine and enhance the scope for this work package.

Deliverable: A refined specification to include all comments and suggestions from the start-up workshop

- **Task 2.** Review, test and validate the Phase 3 (or latest version) risk prioritisation model

This review and testing stage should include, but is not limited to, the following activities:

- Undertake a fresh evaluation of the model. This should include recalibration if necessary, of the allocated scorings and weightings of the various input criteria.
- Sensitivity testing to ensure the model is working as designed and delivering results that are valid and reasonable. The results from this activity should be used to amend and refine the model.
- Re-evaluation of the input data to ensure the way it has been collated, grouped, processed and incorporated into the model is appropriate and will ultimately deliver robust and valid outputs.
- Confirm which additional datasets can be included to enhance the model and the quality of the outputs. Additional datasets / information types likely to come from a variety of suppliers and other projects and initiatives from the wider Phase 4 programme and beyond.
- Revisit the list of priority chemicals and ensure, based on latest understanding, that the most relevant chemicals are being targeted.
- Review the overall presentation of the model to ensure outputs are as clear and user friendly as possible.

Deliverable: An interim report detailing what adaptations are recommended to further enhance the model

- **Task 3.** Model enhancement and GIS functionality

To revisit the GIS package and outputs from Phase 3 (or latest stage) with a view to enhancing the product to make it more accurate, detailed and user friendly. To include the outputs from the preceding tasks to enhance the GIS package of work.

This should include the development of additional layers to assist with the regulatory assessment of risk – for instance, inclusion of Part 2A (Environmental Protection Act 1990) Contaminated Land (England) Regulations scheduled aquifers which will aid identification of potential problem sites warranting EA led evaluation.

To review and update the frontend dashboard to help users navigate the GIS product.

To ensure the final GIS product is a live model with ability to refresh, revise and update as new information is made available. Plus ensure the end user can have model input (depending on read / write access) with ability to download local reports.

The GIS outputs should be provided as a package, together with all underpinning mechanics and input elements, in a format to ensure it can be stored, used and updated by the EA. The date for transfer onto EA systems has yet to be confirmed – however it is anticipated that transfer will happen at the end of 2024/25 / Stage 3 and preparations should be made to accommodate this. Whilst wider external use is a future ambition, for the foreseeable future the model will only be available to EA staff.

Regular liaison with the EA DDTS department will be a requirement to ensure the model is fully suitable for ultimate transfer onto EA systems.

Deliverable: A refined scoring and risk assessment model with updated GIS functionality hosted, in the interim, on a Jacobs' platform

- **Task 4.** Model application and data interrogation

To review and evaluate the outputs of the model looking specifically at patterns, clusters and anomalies with the data and outputs presented. Using a data led approach, highlighting areas of concern where risk evaluation indicates a potential problem which warrants further assessment. Highlighting these zones, discussing the contributing factors, and building that evidence base to justify future regulatory action.

Assessing the risk and ranking the key sites on a regional basis to facilitate easy identification together with a clear rationale for selection and recommendations for future action.

Justification for future regulatory action would have to consider the applicable regulatory regime. Part 2A is considered to be a key legislative tool to progress sites of concern. Prioritisation of sites for EA led action as potential special sites should be considered using relevant selection criteria e.g. scheduled aquifers.

Deliverable: Summary of conclusions from this assessment of model outputs and regional risk ranking with justification

- **Task 5.** Draft reporting and GIS outputs

To deliver all associated draft reports plus the revised GIS model for critical review and comment. A final package to be delivered at the end of Stage 3 (2024/25) in readiness for transfer onto EA systems.

Deliverable: Draft version of the main report, data evaluation, risk ranking and GIS outputs

- **Task 6.** Development of guidance and training

Development of five training modules for batches of EA / DEFRA staff to provide a background to the model, its development, its intended use and demonstrate the user experience. To support the model with a user manual and guidance document including case studies and frequently asked questions.

Anticipated to be a PowerPoint or equivalent package that can be recorded but also rolled out on five occasions to a diverse internal EA and potentially external audience via MS Teams, WebEx or similar form of communication channel.

Deliverable: Training module and associated guidance document
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- **Task 7.** Close-out

A day long workshop that will enable the consultant to present all outputs associated with this activity. To facilitate comment, critical review and next steps.

- **Deliverable(s): A successful close-out meeting that enables discussion relating to all deliverables, including recommendations for further work, to include all comments made by reviewing parties**
- **Clear recommendations at the end of Years 1 and 2 for subsequent stages of the project**
- **To be followed by delivery of a finalised report - including risk ranking, a training module, associated guidance document and finalised model and GIS outputs with Stage 3 outputs facilitating transfer onto EA systems (as agreed with DDTS)**

Programme

The EA seeks to appoint Jacobs on a direct award basis to build on the outputs of Phase 3, specifically related to the GIS model and the interpretation of the outputs. As indicated above, this work package will be awarded on a three-year rolling basis and broken down into Stages 1-3 for each of the financial years (2022/23 – 2024/25). Each stage should deliver the tasks detailed above. And each stage will be separated with a contract break clause to facilitate review, discussion and agreement on the approach in readiness for commencement at the start of the following financial year

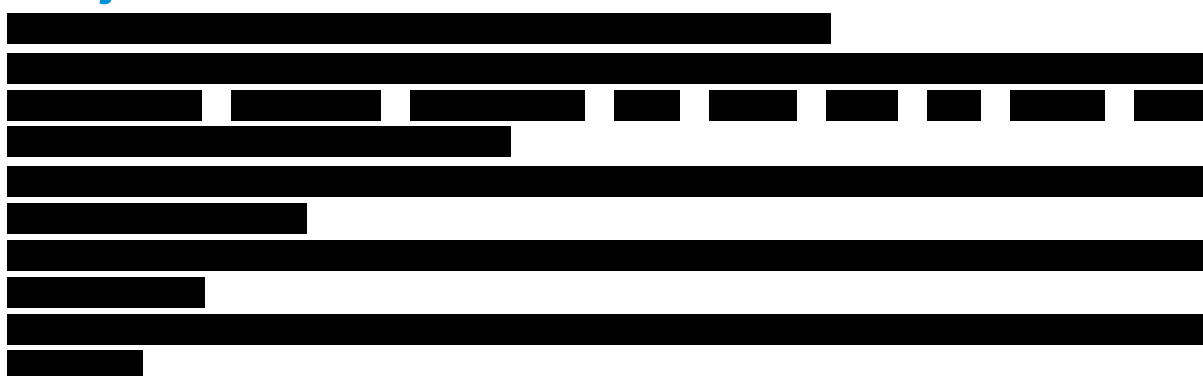
(subject to agreement, supplier performance and value for money of the proposed next stage activities).

The deadline for delivery of Stage 1 is 31st March 2023. Delivery for the subsequent two follow-on stages will be 31st March 2024 and 2025 respectively.

The Tasks and deliverables have been outlined in this document and Jacobs is required to provide a programme (in the form of a Gantt chart) which will allow completion of all tasks by the agreed deadlines.

We anticipate a minimum of fortnightly update calls between the EA and Jacobs. In addition, meetings will be required upon the delivery of the key project outputs, including the interim outputs. The format of these meetings will depend on the nature and type of information to discuss and the situation in relation to COVID-19 restrictions. The Project Manager should be kept fully apprised of project developments and progress, to include any deviations from the agreed scope.

Project Governance



Intellectual Property Rights

The findings and outputs delivered from this project will remain the Property of the EA throughout.

The Services

The EA requires the supplier to propose a methodology and approach to deliver the tasks outlined in the scope (for Stages 1-3), which are summarised in the table below;

Task No.	Requirement	Deliverable	Anticipated start date for Stage 1
Task 1	Start-up workshop to discuss approach and refine scope	A refined specification to include all comments and suggestions from the start-up workshop	w/c 20/06/22
Task 2	Review, test and validate the Phase 3 (or latest	An interim report detailing what adaptations are	w/c 27/06/22

	version) risk prioritisation model	recommended to further enhance the model	
Task 3	Model enhancement and GIS functionality	A fully refined scoring and risk assessment model with updated GIS functionality	w/c 18/07/22
Task 4	Model application and data interrogation	Summary of conclusions and regional risk ranking with justification	w/c 19/09/22
Task 5	Draft reporting and GIS outputs	Draft version of the main report, data evaluation, risk ranking and GIS outputs	w/c 12/12/22
Task 6	Development of guidance and training	Training module and associated guidance document	23/01/23
Task 7	Close-out and final reporting	A successful close-out meeting. Final report - including risk ranking, a training module, associated guidance document and agreed model and GIS outputs – in readiness for transfer onto EA systems at the end of Stage 3	27/03/23

Health, Safety and Environmental Requirements

The EA will work with suppliers who pursue sustainability in their operations, thereby ensuring the EA is not contracting with a supplier whose operational outputs run contrary to EA's objectives.

It is Government policy to use procurement to help deliver their social value objectives. Therefore, we have considered which of the [Social Value Model](#) themes would be most relevant and applicable to this procurement in order to ensure additional sustainability and social value considerations are incorporated into the delivery of this work.

The Environment Agency's objective is to see what additional activities to support professional development and educational attainment relevant to the contract can be delivered.

This could include training opportunities, education materials, addressing skills gaps and/ or activities that results in recognised qualifications. We are also keen to see

demonstrated actions to identify and tackle inequality in employment, skills and pay in the contract workforce.

Jacobs should demonstrate how you will create opportunities through the delivery of the contract to support the objective outlined above. For example, influence staff, suppliers, customers and communities with regard to academic engagement, co-design/creation of education materials, training, education, partnering/collaborating and volunteering opportunities.

Using a maximum of 1 page describe the commitment your organisation will make to ensure that **additional opportunities specific to the contract** deliver the objective outlined.

Your response should include:

- your 'Method Statement', stating how you will achieve this and how your commitment meets the objective, and
- a timed project plan and process, including how you will implement your commitment and by when
- outline of how you will monitor, measure and report on your commitments/ the impact of your proposals
- description of tools/ processes used to gather data
- reporting provision
- feedback and improvement

Jacobs should also provide a copy of their current environmental policy and any environmental accreditation schemes such as ISO 14001 or EMAS which they have been awarded or are working towards.

Jacobs will need to approach sustainability with a focus on the entire life cycle of the project (stages 1 -3) and plan and deliver a sustainability progress report at the end of each stage, outlining what they have achieved and what their next steps are.

SCHEDULE 2 – PRICING SCHEDULE

Response to Project Specification 200522 and Clarifications 280622
PFAS Risk Screening Project Phase 4 - Work Package 1: GIS Model Refinement and Application

Total awarded contract value for Year 1, 2 and 3 is £542,149.38 (ex VAT)

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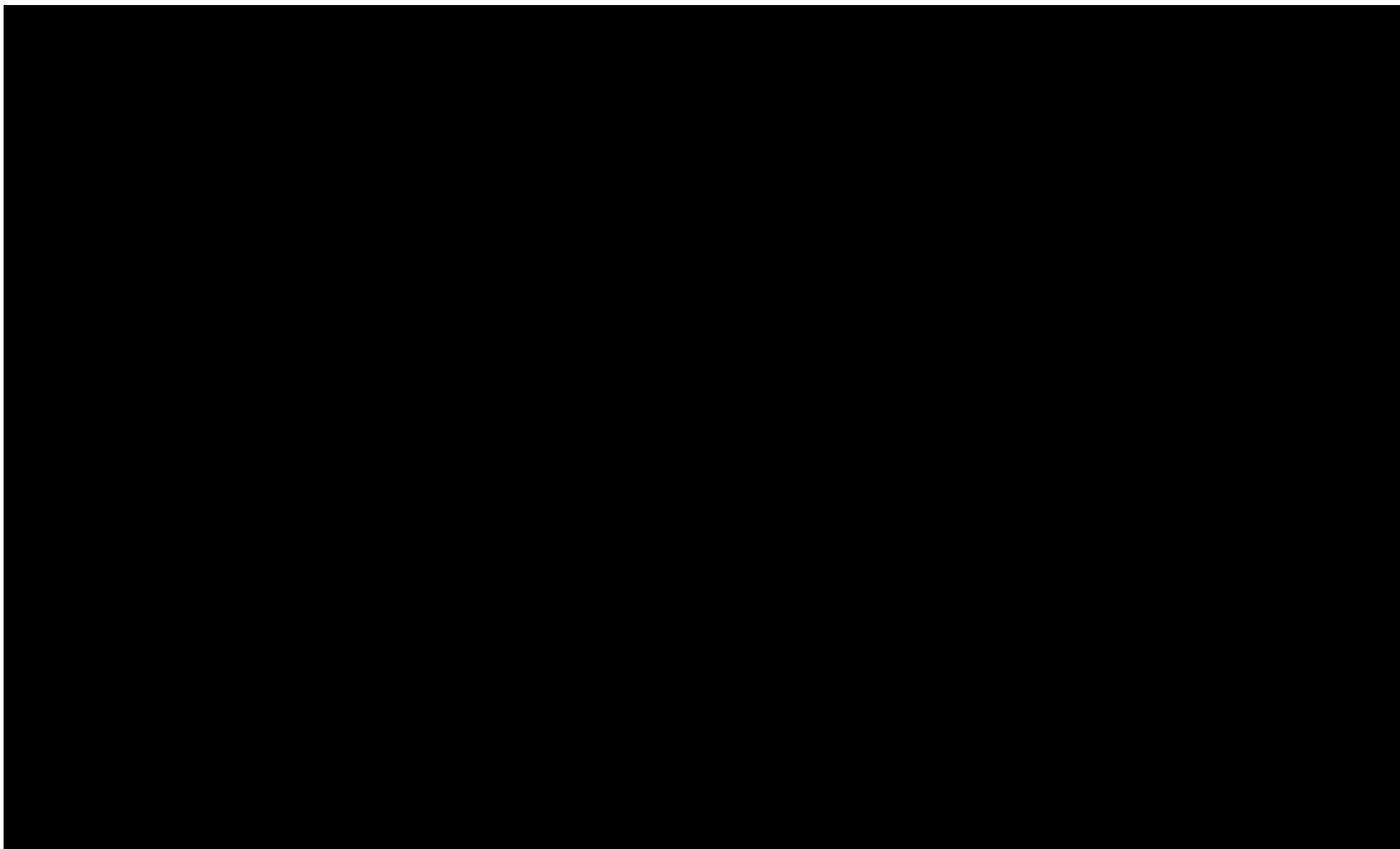
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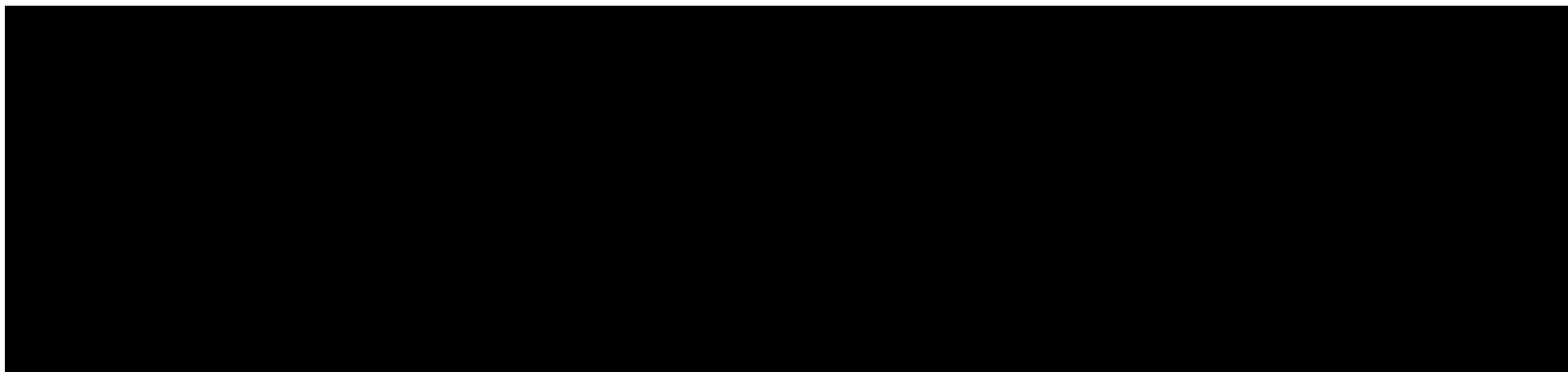
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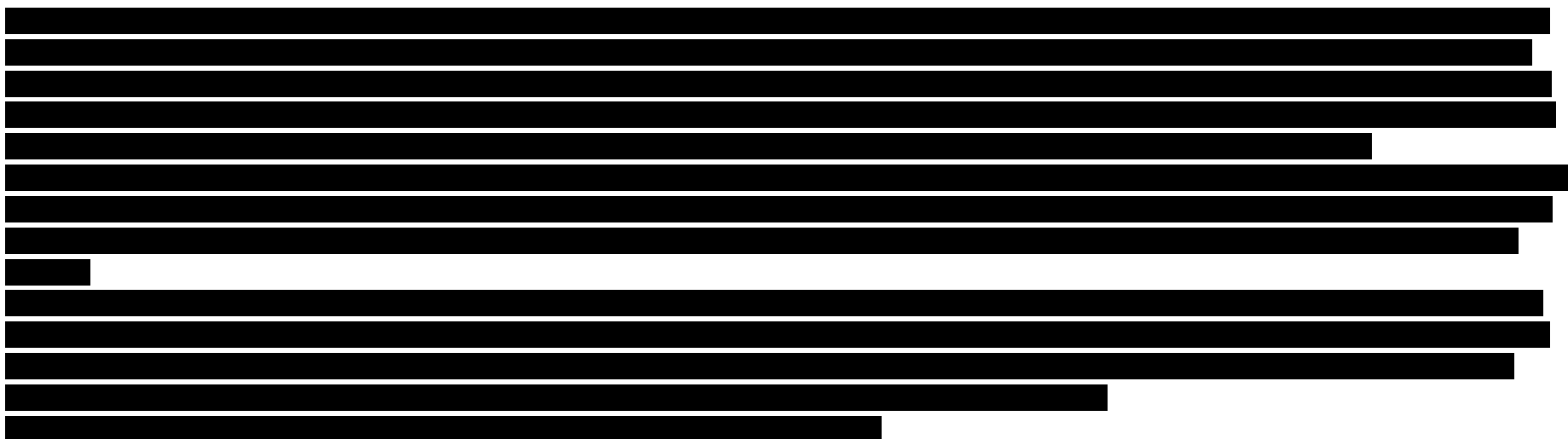
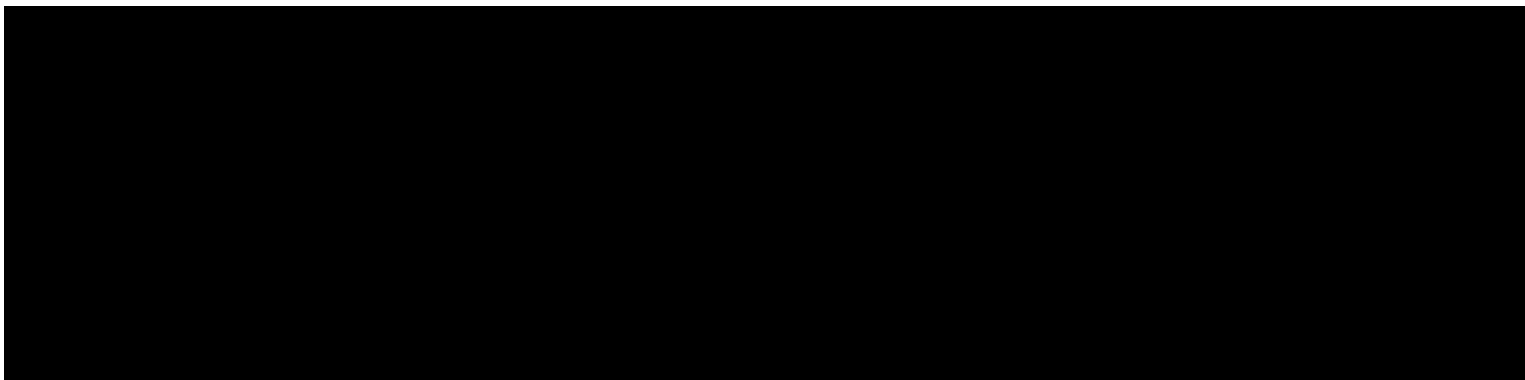
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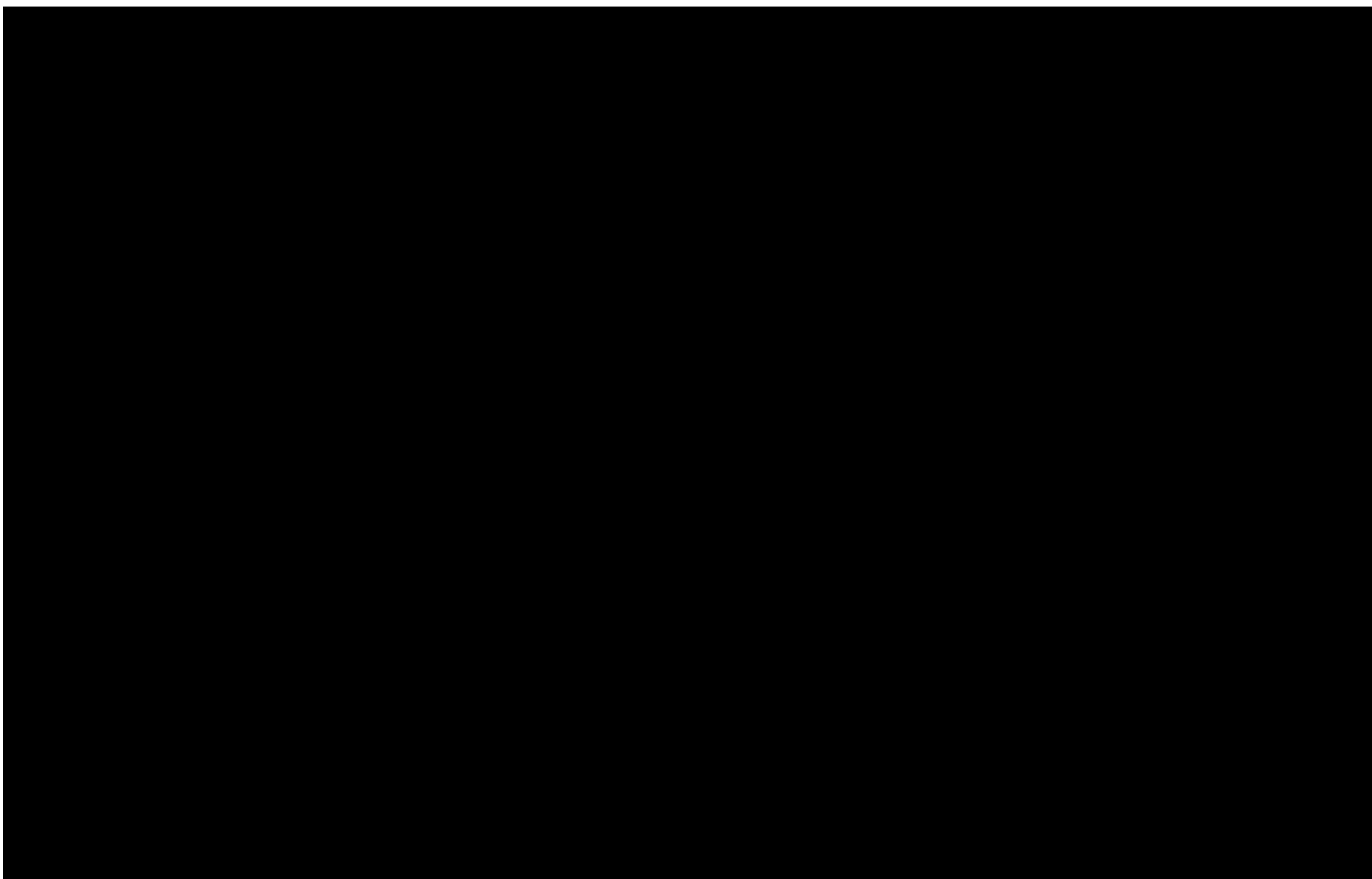
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SCHEDULE 4 – DATA PROTECTION

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

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

Annex 2: Joint Controller Agreement (where required).

Party: a Party to this Contract.

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

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

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

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

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing. **Protective Measures:** appropriate technical and organisational measures which may include: the use of pseudonyms and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Annex 1 (Security).

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

1. DATA PROTECTION

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

1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

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

- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

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

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

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

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

DataProtection@environment-agency.gov.uk

Horizon House, Deanery Road, Bristol BS1 5AH

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

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

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

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Contractor is the Processor in accordance with Clause 1.1.
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.]</i> <i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes.]</i> <i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i> <i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>

Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

End of document.