



Department
for Environment
Food & Rural Affairs

Mallard House, Floor 3
1-2 Peasholme Green
York
YO1 7PX

T: 03459 335577
helpline@defra.gsi.gov.uk
www.gov.uk/defra

DTA Ecology
Rectory Farm
Finchampstead
Wokingham
RG40 4JY

Your ref:
Our ref: ecm_54422
Date: 21/02/19

Dear Sirs

Award of contract for the supply of consultancy for a decision framework to advise on the adverse effect on habitat from air pollution.

Following your tender/ proposal for the supply of consultancy to create a framework for decision-making to manage risk of challenge and provide a transparent, strong rationale for future advice on habitat impacts as a result of air pollution to Natural England, we are pleased to award this contract to DTA Ecology.

This letter (Award Letter) and its Annexes set out the terms of the contract between Natural England as the Customer and DTA Ecology as the Contractor for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Customer and the Contractor agree as follows:

- 1) The charges for the Services shall be as set out in Annex 1 – Schedule 2.
- 2) The specification of the Services to be supplied is as set out in Annex 1– Schedule 1.
- 3) The Term shall commence on 20th February 2019 and the Expiry Date shall be 31st July 2019 unless extended or subject to early termination.

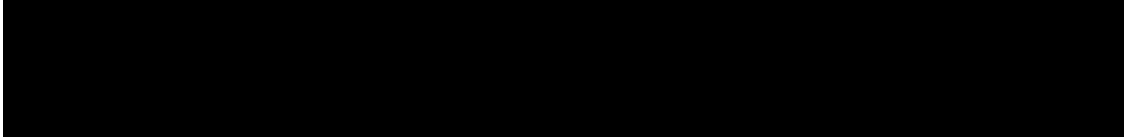
- 4) The address for notices of the Parties are:

Customer

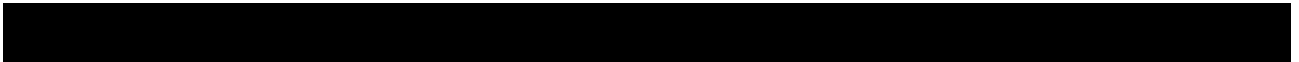
Natural England
Apex Court
City Link
Nottingham
NG2 4LA

Contractor

DTA Ecology
Rectory Farm
Finchampstead
Wokingham
RG40 4JY



- 5) The following persons are Key Personnel for the purposes of the Agreement:



- 6) The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

Payment

All invoices should be sent, quoting a valid purchase order number (PO Number), to: Accounts-Payable.neg@sscl.gov.uk or Shared Services Connected Limited, PO Box 790, Phoenix House, Celtic Springs Business Park, Newport, Gwent, NP10 8FZ. Within 10 Working Days of receipt of your acceptance of this letter via Bravo, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to Accounts-Payable.neg@sscl.gov.uk or by telephone 0845 603 7262 between 09:00-17:00 Monday to Friday.

Liaison

For general liaison your contact will continue to be [REDACTED] [REDACTED] email [REDACTED] Tel no: [REDACTED]. We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Services. Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000. Acceptance of the offer comprised in this Agreement must be made within 7 days from the date of this Award Letter and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("Bravo"). No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours sincerely

[REDACTED]
Category Manager
Defra Group Commercial

[REDACTED]



Department
for Environment
Food & Rural Affairs

Annex 1

Contract for: Consultancy for a decision framework to advise on the adverse effect on habitat from air pollution

Contract Reference Project_25381

February 2019



Contents

<u>BACKGROUND</u>	7
<u>1. Definitions and Interpretation</u>	7
<u>2. Contract and Contract Term</u>	10
<u>3. Price and Payment</u>	11
<u>4. Extension of the Contract</u>	11
<u>5. Warranties and Representations</u>	12
<u>6. Service Standards</u>	13
<u>7. Termination</u>	14
<u>8. Consequences of Expiry or Termination</u>	14
<u>9. Liability, Indemnity and Insurance</u>	15
<u>10. Confidentiality and Data Protection</u>	16
<u>11. Freedom of Information</u>	21
<u>12. Intellectual Property Rights</u>	21
<u>13. Prevention of Corruption and Fraud</u>	21
<u>14. Discrimination</u>	22
<u>15. Environmental and Ethical Policies</u>	22
<u>16. Health and Safety</u>	22
<u>17. Monitoring and Audit</u>	22
<u>18. Transfer and Sub-Contracting</u>	23

<u>19.</u>	<u>Variation</u>	24
<u>20.</u>	<u>Dispute Resolution</u>	24
<u>21.</u>	<u>Supplier's Status</u>	25
<u>22.</u>	<u>Notices</u>	25
<u>23.</u>	<u>Entire Agreement</u>	25
<u>24.</u>	<u>Third Party Rights</u>	26
<u>25.</u>	<u>Waiver</u>	26
<u>26.</u>	<u>Publicity</u>	26
<u>27.</u>	<u>Force Majeure</u>	26
<u>28.</u>	<u>Governing Law and Jurisdiction</u>	27
<u>29.</u>	<u>Electronic Signature</u>	27
	<u>SCHEDULE 1 - SPECIFICATION OF SERVICES</u>	28
	<u>SCHEDULE 2 - PRICES</u>	39
	<u>SCHEDULE 3 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS</u>	42

THIS CONTRACT is dated 20th February 2019

BETWEEN

NATURAL ENGLAND of Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX (the “**Authority**”); and

DTA Ecology of Rectory Farm, Finchampstead, Wokingham, Berkshire, RG40 4JY (the “**Supplier**”)

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

BACKGROUND

- a) The Authority requires the services set out in Schedule 1 (the “**Services**”).
- b) The Authority has awarded this contract for the Services to the Supplier and the Supplier agrees to provide the Services in accordance with the terms of the contract.

AGREED TERMS

1. Definitions and Interpretation

- 1.1 In the Contract, unless the context requires otherwise, the following terms shall have the meanings given to them below:

‘**Approval**’: the prior written consent of the Authority.

‘**Authority Website**’: www.naturalengland.org.uk

‘**Contract Term**’: the period from the Commencement Date to the Expiry Date.

‘**Contracting Authority**’: an organisation defined as a contracting authority in Regulation 2 of the Public Contracts Regulations 2015.

‘**Controller**’: has the meaning given in the GDPR.

‘**Data Loss Event**’: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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**’: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

‘**Data Protection Legislation**’: (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': 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.

'Default': a breach by the Supplier or Staff of its obligations under the Contract or any other default, negligence or negligent statement in connection with the Contract.

'Dispute Resolution Procedure': the dispute resolution procedure set out in Clause 20.

'DPA 2018': the Data Protection Act 2018.

'Force Majeure': any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, its Staff or any other failure in the Supplier's supply chain.

'Fraud': any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Authority or any other Contracting Authority.

'GDPR': the General Data Protection Regulation (Regulation (EU) 2016/679).

'Good Industry Practice': 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 similar circumstances.

'Goods': all products, documents, and materials developed by the Supplier or its agents, Sub-contractors, consultants, suppliers and Staff in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

'Intellectual Property Rights': any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and

procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites.

‘IP Materials’: all Intellectual Property Rights which are:

- a) furnished to or made available to the Supplier by or on behalf of the Authority; or
- b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

‘Law’: 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’: Law Enforcement Directive (Directive (EU) 2016/680).

‘Personal Data’: has the meaning given in the GDPR.

‘Personal Data Breach’: has the meaning given in the GDPR.

‘Price’: the price for the Services set out in Schedule 2.

‘Processor’: has the meaning given in the GDPR.

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

‘Replacement Supplier’: any third party supplier of services appointed by the Authority to replace the Supplier.

‘Staff’: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-contractors who are engaged in providing the Services from time to time.

‘Sub-contract’: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

‘Sub-contractor’: third parties which enter into a Sub-contract with the Supplier.

‘Sub-processor’: any third party appointed to process Personal Data on behalf of the Supplier related to this Contract.

‘Valid Invoice’: an invoice containing the information set out in Clause 3.3.

‘VAT’: Value Added Tax.

‘Working Day’: Monday to Friday excluding any public holidays in England and Wales.

- 1.2 The interpretation and construction of the Contract is subject to the following provisions:
- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - b) words importing the masculine include the feminine and the neuter;
 - c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;
 - f) references to the Services include references to the Goods;
 - g) references to Clauses and Schedules are to clauses and schedules of the Contract; and
 - h) the Schedules form part of the Contract and have affect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

2. Contract and Contract Term

- 2.1 The Supplier shall provide the Authority with the services set out in Schedule 1 (the **“Services”**) in accordance with the terms and conditions of the Contract.
- 2.2 The Contract is effective on 20th February 2019 (the **“Commencement Date”**) and ends on 31st July 2019 (the **“Expiry Date”**) unless terminated early or extended in accordance with the Contract.

3. Price and Payment

- 3.1 In consideration of the Supplier providing the Services in accordance with the Contract, the Authority shall pay the Price to the Supplier.
- 3.2 The Authority shall:
- a) provide the Supplier with a purchase order number ("**PO Number**"); and
 - b) pay all undisputed sums due to the Supplier within 30 days of receipt of a Valid Invoice.
- 3.3 A Valid Invoice shall:
- a) contain the correct PO Number;
 - b) express the sum invoiced in sterling; and
 - c) include VAT at the prevailing rate as a separate sum or a statement that the Supplier is not registered for VAT.
- 3.4 The Supplier shall submit invoices in agreed intervals each month to the Authority at the following addresses: Accounts-Payable.neg@sscl.gse.gov.uk or SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ
- 3.5 The Supplier acknowledges that:
- a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Authority will not be liable to pay the Supplier any additional VAT;
 - b) invoices which do not include the information set out in Clause 3.3 will be rejected.
- 3.6 Any late payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.7 The Supplier shall not suspend provision of the Services if any payment is overdue.
- 3.8 The Supplier indemnifies 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 Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract.

4. Extension of the Contract

- 4.1 The Authority may, by written notice to the Supplier, extend the Contract for a further period up to 0 months.

5. Warranties and Representations

5.1 The Supplier warrants and represents for the Contract Term that:

- a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Contract and to provide the Services;
- b) the Contract is executed by a duly authorised representative of the Supplier;
- c) in entering the Contract it has not committed any Fraud;
- d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier 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 that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;
- e) 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 a material adverse effect on its ability to perform its obligations under the Contract;
- f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
- g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;
- h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
- i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- j) it will comply with its obligations under the [Immigration, Asylum and Nationality Act 2006](#).

5.2 The Supplier warrants and represents that in the 3 years prior to the date of the Contract:

- a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;
- b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and

- c) it has complied with all relevant tax laws and regulations and no tax return submitted to a relevant tax authority has been found to be incorrect under any anti-abuse rules.

6. Service Standards

- 6.1 The Supplier shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.
- 6.2 If the Services do not meet the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as may be specified by the Authority.
- 6.3 The Authority may by written notice to the Supplier 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 the Goods. If the Authority rejects any of the Goods it may (without prejudice to its other rights and remedies) either:
 - a) have the Goods promptly either repaired by the Supplier or replaced by the Supplier 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 the repair or replacement has occurred; or
 - b) treat the Contract as discharged by the Supplier's breach and obtain a refund (if the Goods have already been paid for) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining replacements.
- 6.4 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 6.3.
- 6.5 If the Authority issues a receipt note for delivery of the Goods it shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.
- 6.6 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for 3 years from the date of acceptance. If the Authority shall within such guarantee period or within 30 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier 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 choose) free of charge.
- 6.7 Any Goods rejected or returned by the Authority pursuant to this Clause 6 shall be returned to the Supplier at the Supplier's risk and expense.

7. Termination

- 7.1 The Authority may terminate the Contract at any time by giving 30 days written notice to the Supplier.
- 7.2 The Authority may terminate the Contract in whole or in part by notice to the Supplier with immediate effect and without compensation to the Supplier if:
- a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the [Mental Health Act 1983](#);
 - b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the [Insolvency Act 1986](#), or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;
 - c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;
 - d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;
 - e) subject to Clause 7.3, the Supplier commits a Default;
 - f) there is a change of control of the Supplier; or
 - g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Authority).
- 7.3 If the Supplier commits a Default which is capable of being remedied, the Authority may terminate the Contract pursuant to Clause 7.2(e) only if the Supplier has failed to remedy the Default within 20 Working Days of being notified of the Default by the Authority.

8. Consequences of Expiry or Termination

- 8.1 If the Authority terminates the Contract under Clause 7.2:
- a) and then makes other arrangements for the supply of the Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term; and

- b) no further payments shall be payable by the Authority to the Supplier (for the Services supplied by the Supplier 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 Clause 8.1(a).
- 8.2 On expiry or termination of the Contract the Supplier shall:
- a) co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier; and
 - b) procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services) shall be delivered promptly to the Authority.
- 8.3 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 Supplier under Clauses 3, 8 to 13, 17, 26 and 28.

9. Liability, Indemnity and Insurance

- 9.1 Notwithstanding any other provision in the Contract, neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence;
 - b) Fraud or fraudulent misrepresentation; or
 - c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.
- 9.2 The Supplier shall indemnify and keep indemnified the Authority against all claims, proceedings, demands, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise in tort (including negligence) default or breach of the Contract to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or Fraud of itself or of Staff or Sub-contractors save to the extent that the same is directly caused by the negligence, breach of the Contract or applicable law by the Authority.
- 9.3 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

9.4 Subject to Clause 9.1:

a) neither Party is liable to the other for any:

(i) loss of profits, business, revenue or goodwill;

(ii) loss of savings (whether anticipated or otherwise); and/or

(iii) indirect or consequential loss or damage

b) each Party's total aggregate liability in respect of all claims, losses damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall not exceed £424,000 (four hundred and twenty four thousand pounds) .

9.5 The Supplier shall, with effect from the Commencement Date and for such period as necessary to enable the Supplier to comply with its obligations under the Contract, 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 Supplier, arising out of the Supplier's performance of its obligations under the Contract, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Term and for a minimum of 6 years following the end of the Contract.

9.6 The Supplier 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.

9.7 If the Supplier fails to comply with Clauses 9.5 and 9.6 the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

9.8 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

9.9 The Supplier 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 Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

10. Confidentiality and Data Protection

10.1. Subject to Clause 10.2, unless agreed otherwise in writing, the Supplier shall, and shall procure that Staff shall, keep confidential all matters relating to the Contract.

- 10.2. Clause 10.1 shall not apply to any disclosure of information:
- a) required by any applicable law;
 - b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;
 - c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 10.1; or
 - d) which is already lawfully in the Supplier's possession prior to its disclosure by the Authority.
- 10.3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 3 by the Authority and may not be determined by the Supplier.
- 10.4. The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 10.5. The Supplier 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.
- 10.6. The Supplier 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 3 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier 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 3);
 - (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 Supplier's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier is required by Law to retain the Personal Data.
- 10.7. Subject to clause 10.8 the Supplier 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.
- 10.8. The Supplier's obligation to notify under clause 10.7 shall include the provision of further information to the Authority in phases, as details become available.
- 10.9. Taking into account the nature of the processing, the Supplier 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 10.7 (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.

10.10. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 10. This requirement does not apply where the Supplier 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.

10.11. The Supplier shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

10.12. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

10.13. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:

- a. notify the Authority in writing of the intended Sub-processor and processing;
- b. obtain the written consent of the Authority; and
- c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 10 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.

10.14. The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.

- 10.15. 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).
- 10.16. 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 Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 10.17. This clause 10 shall apply during the Contract Term and indefinitely after its expiry.

11. Freedom of Information

- 11.1. The Supplier acknowledges that the Authority is subject to the [Freedom of Information Act 2000](#) and the [Environmental Information Regulations 2004](#) (the "Information Acts") and may be required to disclose certain information to third parties including information relating to this Contract pursuant to the Information Acts.
- 11.2. If the Authority receives a request for information relating to the Contract pursuant to either of the Information Acts, the Authority may disclose such information as necessary in order to comply with its duties under the Information Acts.

12. Intellectual Property Rights

- 12.1 The IP Materials shall vest in the Authority and the Supplier shall not, and shall procure that Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for the Supplier to provide the Services.
- 12.2 The Supplier shall indemnify and keep indemnified the Authority and the Crown against all actions, claims, demands, losses, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur arising from any infringement or alleged infringement of any Intellectual Property Rights by the availability of the Services except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

13. Prevention of Corruption and Fraud

- 13.1. The Supplier shall act within the provisions of the [Bribery Act 2010](#).

- 13.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of money from the Authority.
- 13.3. The Supplier shall notify the Authority immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

14. Discrimination

- 14.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 14.2 The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

15. Environmental and Ethical Policies

- 15.1 The Supplier shall provide the Services in accordance with the Authority's policies on the environment, sustainable and ethical procurement and timber and wood derived products, details of which are available on the Authority Website.

16. Health and Safety

- 16.1 Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.
- 16.2 While on the Authority's premises, the Supplier shall comply with the Authority's health and safety policies.
- 16.3 The Supplier shall notify the Authority immediately if any incident occurs in providing the Services on the Authority's premises which causes or may cause personal injury.
- 16.4 The Supplier shall comply with the requirements of the [Health and Safety at Work etc Act 1974](#), and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's premises when providing the Services.
- 16.5 The Supplier's health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) shall be made available to the Authority on request.

17. Monitoring and Audit

- 17.1 The Authority may monitor the provision of the Services and the Supplier shall co-operate, and shall procure that Staff and any Sub-contractors co-operate, with the Authority in carrying out the monitoring at no additional charge to the Authority.
- 17.2 The Supplier shall keep and maintain until 6 years after the end of the Contract Term full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall allow the Authority, the National Audit Office and the Comptroller and Auditor General reasonable access to those records and on such terms as they may request.
- 17.3 The Supplier agrees to provide, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

18. Transfer and Sub-Contracting

- 18.1 The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval.
- 18.2 If the Supplier enters into any Sub-contract in connection with the Contract it shall:
- a) remain responsible to the Authority for the performance of its obligations under the Contract;
 - b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;
 - c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;
 - d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.
- 18.3 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 or 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 Authority; or
 - b) any private sector body which performs substantially any of the functions of the Authority.
- 18.4 Any change in the legal status of the Authority 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 Authority.

19. Variation

- 19.1 Subject to the provisions of this Clause 19, the Authority may change the Specification provided that such change is not a material change to the Specification (a “**Variation**”).
- 19.2 The Authority may request a Variation by notifying the Supplier with sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement it. Variations agreed by the Parties shall be made in writing.
- 19.3 If the Supplier 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 Supplier to fulfil its obligations under the Contract without the Variation; or
 - b) refer the request to be dealt with under the Dispute Resolution Procedure.

20. Dispute Resolution

- 20.1 The Parties shall attempt in good faith to resolve any dispute between them arising out of the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall include the escalation of the dispute to the Supplier’s representative and the Authority’s commercial director or equivalent.
- 20.2 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.
- 20.3 If the dispute cannot be resolved by the Parties pursuant to Clause 20.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clauses 20.5 to 20.10.
- 20.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.
- 20.5 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree a Mediator within 10 Working Days after a request by one Party or if the chosen Mediator is unable 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.
- 20.6 The Parties shall, within 10 Working Days of the appointment of the Mediator, meet the Mediator to agree a programme for the disclosure of information and the structure to be adopted for negotiations. The Parties may at any stage seek

assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

- 20.7 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.
- 20.8 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.
- 20.9 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such 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.
- 20.10 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 the dispute may be referred to the Courts.
- 20.11 Subject to Clause 20.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 20.1 and 20.5 to 20.10 have been completed.

21. Supplier's Status

- 21.1 Nothing in the Contract shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent for the other for any purposes except as specified by the terms of the Contract.
- 21.2 The Supplier shall not (and shall ensure that Staff shall not) say or do anything that might lead any person to believe that the Supplier is acting as the agent, partner or employee of the Authority.

22. Notices

- 22.1 Notices shall be in writing and in English and shall be deemed given if signed by or on behalf of a duly authorised officer of the Party giving the notice and if left at, or sent by first class mail to the address of the receiving Party as specified in the Contract (or as amended from time to time by notice in writing to the other Party).

23. Entire Agreement

- 23.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, arrangements and undertakings.

24. Third Party Rights

- 24.1 No term of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a Party other than the Crown.

25. Waiver

- 25.1 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.
- 25.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
- 25.3 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.

26. Publicity

- 26.1 The Supplier shall not without Approval:
- a) make any press announcements or publicise the Contract or its contents in any way; or
 - b) use the Authority's name or logo in any promotion or marketing or announcement.
- 26.2 The Authority may publish the Contract on the Authority Website or another website at its discretion.

27. Force Majeure

- 27.1 Except to the extent that the Supplier has not complied with any business continuity plan agreed with the Authority, neither Party shall be liable for any failure to perform its obligations under the Contract if, and to the extent, that the failure is caused by act of God, war, riots, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding any industrial dispute relating to the Supplier, Staff or Sub-contractors.
- 27.2 If there is an event of Force Majeure, the affected Party shall use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

28. Governing Law and Jurisdiction

- 28.1 The Contract 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.
- 28.2 The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Supplier 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.

29. Electronic Signature

- 29.1 Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000.
- 29.2 The Contract is formed on the date on which the Supplier communicates acceptance on the Authority's electronic contract management system ("**Bravo**").
- 29.3 No other form of acknowledgement will be accepted.

30. Precedence

In the event of and only to the extent of any conflict between the terms and conditions or the special terms below, the conflict shall be resolved in accordance with the following order of precedence:

- a) the special terms below;
- b) the main terms of the Contract (pages 1 to 15);
- c) any other document referred to in the Agreement

Unless expressly agreed, a document varied pursuant to clause 19 shall not take higher precedence than specified here.

SCHEDULE 1 - SPECIFICATION OF SERVICES

PROVISION OF CONSULTANCY SERVICES

1. SUPPLIER'S DUTIES

- 1.1 During the Contract Term the Supplier shall:
- a) use its best endeavours to promote the interests of the Authority;
 - b) perform the Services under the name 'Natural England' or such other name as the Authority may choose from time to time;
 - c) promptly give to the Authority all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services;
 - d) complete the Services in accordance with the agreed timetable, or if no timetable is specified, within a reasonable period of time.
- 1.2 The Supplier may be subject to satisfactory background checks such as those under the Disclosure and Barring Service.
- 1.3 If the Supplier is unable to provide the Services due to health considerations, including illness or injury it shall advise the Authority of that fact as soon as reasonably practicable. Nothing in this clause 1.3 of this Schedule 1 shall in any way alter, modify, relieve or in any other way vary the Supplier's obligation to provide the Services.
- 1.4 The Supplier shall use reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the Authority may require.
- 1.5 Unless it has been specifically authorised to do so by the Authority in writing, the Supplier shall not:
- a) have any authority to incur any expenditure in the name of or on account of the Authority; or
 - b) hold himself out as having authority to bind the Authority.

2. PROJECT OFFICER

- 2.1 The Project Officer shall be [REDACTED].
- 2.2 The Project Officer shall have overall responsibility for monitoring the performance of the Services.
- 2.3 The Supplier shall meet regularly with the Project Officer and act in good faith and record all decisions made with the Project Officer in writing.

3. OTHER ACTIVITIES

Nothing in the Contract shall prevent the Supplier from being engaged, concerned or having any financial interest as an agent, consultant, director, employee, owner, partner, shareholder or any other capacity in any other business, trade, profession or occupation during the Contract Term provided that such activity does not cause a breach of any of the Supplier's obligations under the Contract,.

4. DATA PROTECTION CONSENT

The Supplier consents to the Authority holding and processing data relating to it for legal, personnel, administrative and management purposes, making such information available to a regulatory body as required and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Supplier including, as appropriate information relating to any criminal proceedings in which the Supplier has been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties.

5. CONTRACTOR STATUS

Notwithstanding clause 9 and 21 of the main agreement, the Contract constitutes a contract for the provision of Services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Authority for and in respect of any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

6. Specification of Services:

Overview:

This project aims to create a framework for decision-making in the context of existing best available information and recent caselaw to manage risk of challenge and provide a transparent, strong rationale for future advice on habitat impacts as a result of air pollution. Where necessary, the project can advise on options to adapt this framework to account for recent caselaw and updated evidence. To do this, the work will consider approaches in other countries (UK and international) and explore the range of scenarios for background pollution levels and known patterns of development pressure (eg clustering of specific source types).

The project will outline an ideal framework and provide sufficient information about risks of challenge to then make operational decisions to streamline the process. It is recognised that the level of effort to acquire detailed information to make a decision should be balanced against the credible risk to habitat. This project will provide options for a highly

evidence based framework to advise on the risk from a new emission source to cause adverse effect or undermine conservation objectives for a designated site based on existing best available evidence. The approach outlined for internationally significant sites¹ will be expected to translate for the risk of damage to habitat and wildlife on Sites of Special Scientific Interest.

Background:

The current Natural England advice process is described in Annex 1. The process mirrors an existing operational approach designed for regulating emission sources through the Industrial Emissions Directive (IED). This is limited to specific sectors and very large emission sources. Natural England's advice remit is to cover all emission sources subject to planning permission through their statutory advice to local authorities. This involves smaller emissions sources that may cluster close to protected habitat and wildlife sites. As control of the larger sources under Industrial Emissions Directive (IED) has progressed, the non-IED sources represent a larger proportion of the pressure from air pollution on England's protected habitat and wildlife sites.

The process for screening for a likely significant effect and advising whether an adverse effect to habitat on an internationally important site can be ruled out is based on the Habitats Regulations Appropriate Assessment process. In recent years, several cases have raised challenge to current methods used for advising on air pollution effects. These include the [Wealden Judgment](#), [People Over Wind and Sweetman vs Coillte Teoranta](#) and [Cooperatie Mobilisation](#) involving the Dutch Integrated Approach to Nitrogen (PAS).

Some habitats have a significant body of data to draw from whilst for some habitats expert judgment is required to supplement the limited data available². For these sites with less information, tools like Nitrogen Decision Framework are considered useful for England's Designated Sites (Annex 2). The Advice Framework should accommodate several levels of available information.

The advice framework and final operational process need to balance credible risk to the environment with risk of challenge and effort required. Natural England receive over 1200 consultations per year from competent authorities that involve proposals that give rise to air emissions potentially affecting habitat and wildlife on these designated sites. The volume of casework can be significant and case-by-case advice can become difficult to deliver in every instance.

Natural England and Defra have made great effort to pursue strategic emission reductions as well as encourage best practice to reduce effects on habitat and wildlife. Examples include when national modelling shows a general downward trend for certain pollutants, where a Clean Air Zone³ has improved air quality or national best practice guidance⁴. The advice framework should account for future trends from this national effort in local decision-making where possible.

¹ Special Areas of Conservation, Special Protection Areas, Ramsar wetland sites

² Assessing the effects of small increments of atmospheric nitrogen deposition (above the critical load) on semi-natural habitats of conservation importance (NECR210)

<http://publications.naturalengland.org.uk/publication/5354697970941952>

³ Defra NO2 Strategy 1- <https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

⁴ Code of Good Agricultural Practice for Ammonia - <https://www.gov.uk/government/publications/code-of-good-agricultural-practice-for-reducing-ammonia-emissions/code-of-good-agricultural-practice-cogap-for-reducing-ammonia-emissions>

This project is comprised of the following work packages:

Work Package 1: Decision data collation and evaluation:

This should form the basis for categorising and prioritising best available evidence in the framework. An initial list is provided in Annex 3. Contractors will be provided with examples from internal systems and referred to full datasets where these are open data.

Key tasks include:

- Collate key existing data source references
- Agree evaluation categories for application in the advice framework (evidence/risk challenge, uncertainty, usability, applicability to different habitat types, etc) and assign rating for data/datasets and evidence
- Explore with key stakeholders and summarise indicators of key aspects of habitat and air quality change that could inform a decision about whether to allow further emissions in an area based on habitat effects including:
 - Site specific data (eg update Nitrogen Decision Framework evidence base)
 - Responses to nitrogen deposition and acid deposition with less confounding factors (eg strong indicators)
 - Other responses for site fabric (eg peripheral plants not part of notified feature such as lower plants) that could inform assessment of a likely response to additional pollution for specific habitat
- Relate conclusions on broad habitat categories to National Vegetation Classification to ensure this is applicable to site relevant data presented on Air Pollution Information System (www.apis.ac.uk/SRCL). All habitats must be covered in the advice framework. This recognises the varying level of data available for some aspects.

Key data sources to include are:

- Benchmarks for effects (critical load/level currently used, or other metrics in development and/or recommended by other studies e.g. metrics based on cumulative deposition)
- Data on habitat and its current condition (eg common standards monitoring)
- Data or methods for considering how additional nutrient nitrogen, acidification or increased concentration might affect habitat and wildlife
 - Nitrogen Decision Framework results and implications of nationally predicted nutrient nitrogen deposition (modelled) for expectation of impact for habitat as well as site-specific information for habitats that have strong indicators of effects from nitrogen deposition. These can be provided by Natural England for the 2013-15 background nitrogen deposition modelled dataset.
- Conservation Objectives and favourable condition table attribute/Targets - Explore maintain or restore objectives – case studies linked to but not solely based on critical load/level exceedance and possibly specific habitats if one is more confounded than another
- Current/ historic loading (eg background pollution and existing sources)
- Future risk (determining likely future exposure)

- Development pressure or new sources (local and national)
- Current mitigation or anticipated reductions (local and national)
- Summary of challenges
 - Caselaw, legal tests, what integrity and damage mean for habitat is not precisely defined and may not match critical loads defined at International (United Nations Economic Commission for Europe) level.

The work package should provide the foundation for improving or adapting the existing assessment process or justify significant deviation. The aim is to provide a sensible metric/mechanism for determining effect on site integrity and conservation objectives or habitat condition and extent.

Work Package 2: Stocktake of existing approaches –

Light-touch review of relevant existing approaches in the UK and internationally to advising on air pollution effects from new plans and projects. This should outline data used in this decision making and any reasoning if available.

Annex 4 provides a general understanding of UK approaches for determining adverse effect on habitat. A summary of data used to support the decision making as well as rationale for the approach and indication of meeting relevant caselaw should be provided.

Work Package 3: Advice framework development and caselaw test –

This work package is flexible but should aim to produce a practical assessment process on which to base Natural England's approach to advising on air pollution effects on habitat and wildlife. Based on the information available (WP1), the regulatory tests and caselaw (WP1) and approaches by other countries (WP2), the contractor should determine the overarching basis for the decision e.g. a defined benchmark and threshold approach, an objective led approach or other. The contractor should provide and evaluate options for approaches to advice to inform decision-making about the advice framework. The contractor is encouraged to hold a meeting to critically examine suggested approaches with key Defra group stakeholders (or others) to produce final advice framework and conclusion paper. The final work would need to be agreed with steering group.

The aim is to make the advice framework as simple as possible whilst highlighting key challenge points of simplifications so an operational decision can be made.

Key tasks include:

- Develop a framework that supports provision of advice to meet tests under appropriate assessment within the Habitats Directive and where possible [the National Planning Policy Framework](#) (esp paragraph 175b about in-combination effects on SSSIs).
- Consider the role of national work to reduce emissions, strategic work locally (eg Shared Nitrogen Action Plans) and possible metrics/indicators when advising on acceptability of emissions over different time scales.
- Consider the role of developments, air emission types and their likelihood to group together (eg cluster) or act together for contributions of pollutants to a specific receptor location. This aims to inform what needs to be considered as part of the "in-combination" test.
- Compose a framework based on best available evidence, potential mitigation mechanisms (if considered applicable) and different levels of background pollution.

Work Package 4: Cases studies and demonstration of framework –

Use the proposed advice framework to work through real examples and produce case studies. Case studies should include proposals alone and in-combination with other plans and projects under varying background pollution scenarios or nitrogen decision framework outcomes.

The framework will need to be tested against the range of decision scenarios found in England and subsequently refined. Case studies should be developed from discussion with Natural England advisers (workshop style or individual interview). The case studies need to cover all scenarios for background pollution, conservation objectives, likelihood of in-combination effect and mitigation (eg local and national intervention present or not, certain or not).

Key tasks:

- Develop case studies demonstrating key aspects of the advice framework including for a proposal alone and in-combination with other plans and projects.
- Consider these under varying levels of background pollution and relationship to habitat sensitivity and conservation objectives. In some cases, a contrast of 2 to 3 habitats will assist with drawing out key considerations. The following should be discussed:
 - When additional emissions will contribute to an already high background level significantly⁵ alone. This could cover 2 to 3 key contrasting habitats or conservation objectives (eg maintain or restore for air pollution).
 - When additional emissions will contribute to an already high background level significantly in-combination with other plans or projects but alone the proposal is not considered significant. Mitigation considerations would be welcome at this point – for example:
 - When using best available technique (BAT Reference- BREF)/ [Code of Good Agricultural Practice](#) (CoGAP) and when not using best available technique or CoGAP.
 - When additional emissions would contribute to a relatively low background pollution level but not result in exceedance of critical level or load. Contrast of 2 to 3 habitats may help draw out key issues.
 - When additional emissions would contribute to a relatively low background pollution level (for 2 to 3 contrasting habitats) but would result in exceedance of critical level or load.
- General consideration of mitigation, certainty required for various assessment stages as to delivery of predicted reductions in pollutant concentration/deposition and betterment of air quality through improvement of existing proposals where background pollution is high.

⁵ Significance is currently determined through use of a guideline screening threshold of 1% of critical level or load (4% for farming). EA also uses a 20% significance threshold for Sites of Special Scientific Interest and a 100% threshold for locally significant sites.

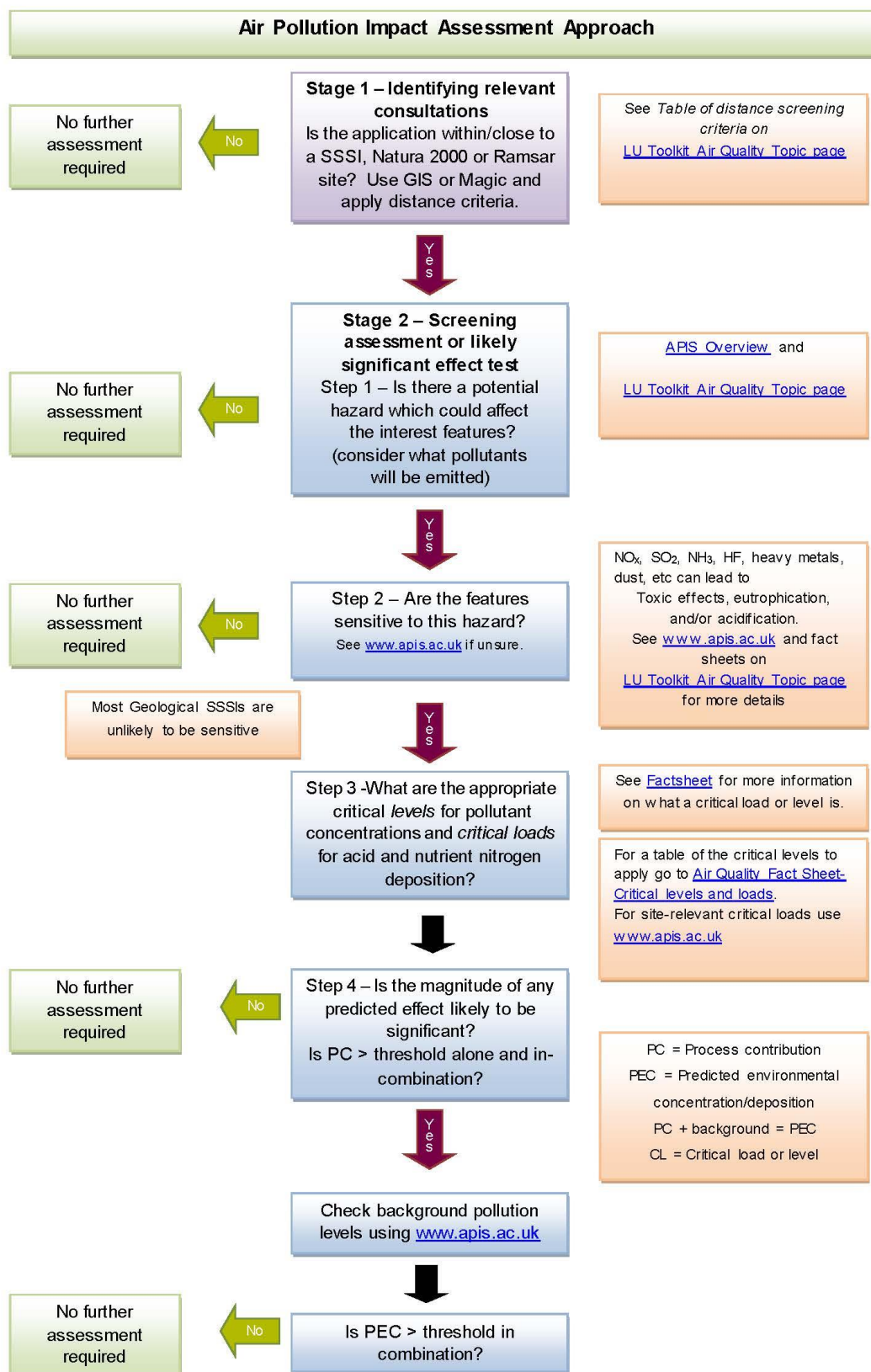
- Provide examples of in-combination effects (small site, archipelago designated site, large designated site lots of development, very little; overlapping/additive effect and cumulative non-overlapping effect) and consider where applicable.

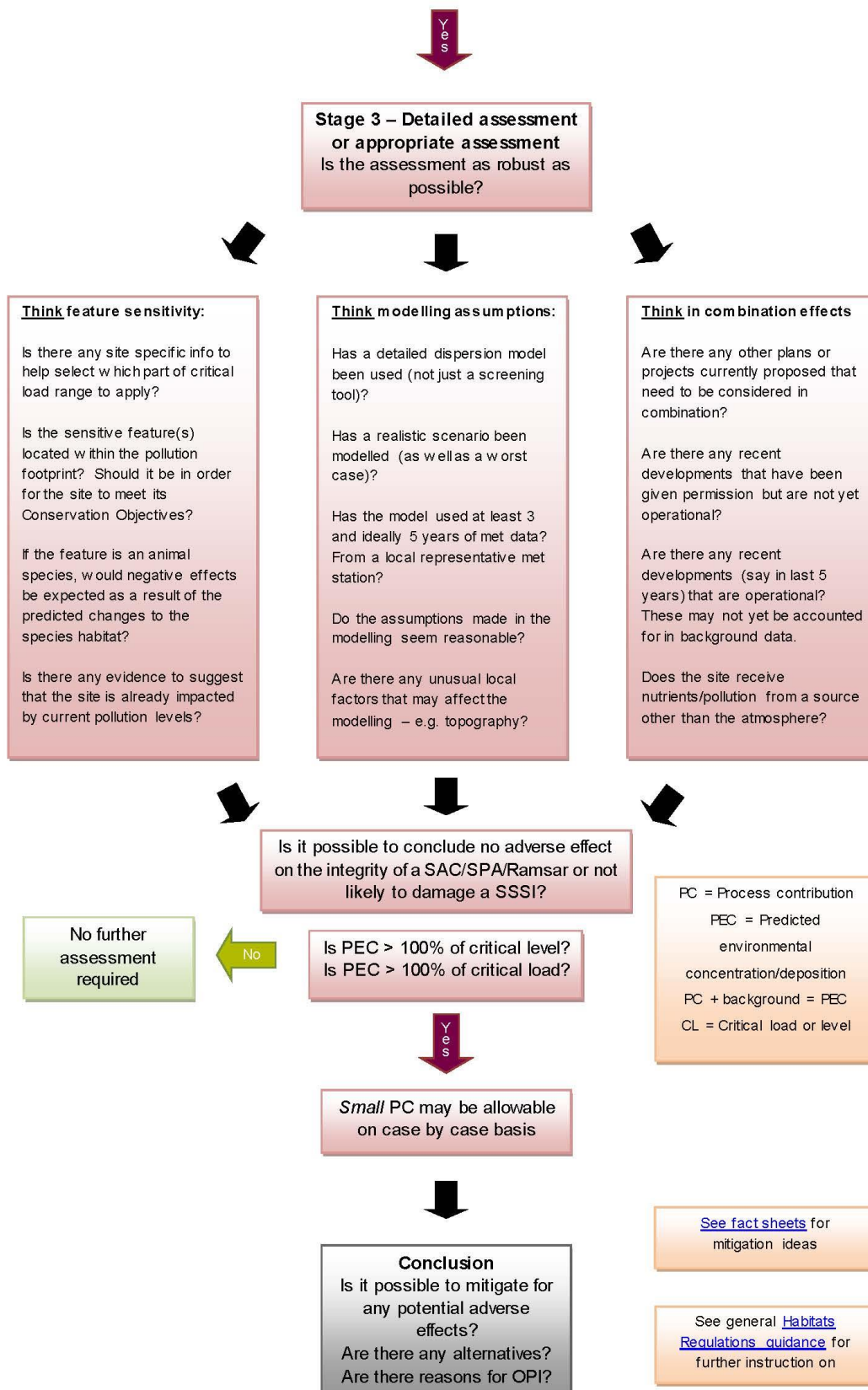
Timelines

A draft report must be produced by the end of March 2019 with final submission by 24th June 2019.

- **WP1 and 2:** Complete draft within 4 weeks of start date
- **WP3:** Draft within 6-8 weeks of start date
- **WP4:** Final report including case studies issued within 16 weeks of start date

Annex 1 Assessment Process Description





Annex 2 Nitrogen Decision Framework Description and Example of Pilot Usage for Advice in Natural England

Nitrogen Decision Framework - overview

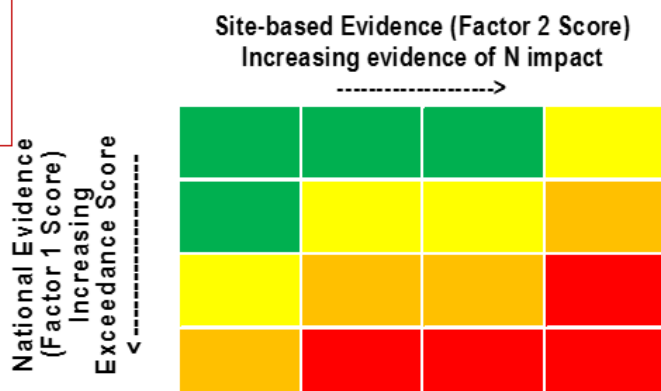
CL = critical load

INPUTS:

Degree of CL exceedance
Uncertainty in deposition estimate
Reliability of CL
Strength of matching between CSM habitat & habitat type for CL

INPUTS:

N indicators in CSM
Strength of N indicator
Strength of confounding factors



OUTPUT:

Not impacted/no threat
Under threat
Not recovering
Impacted

MATRIX for Determining Nitrogen Decision Framework Outcome - In the absence of site specific data, the outcome was determined by cross referencing the Factor 1 score (medium-high exceedance) with the No site-based evidence column. This produces a result of whether a specific habitat at a site may be impacted (eg red or orange outcome) or under different degrees of threat (eg blue, green or yellow).

Factor 2

Factor 1	Exceedance Score	← Strength of site-based evidence that N deposition is not causing adverse impacts		No site-based evidence	Strength of site-based evidence that N deposition is causing adverse impacts →				
		Moderate	Weak		Very weak	Weak	Moderate	Moderately strong	Strong
	Very low	Blue	Blue	Blue	Blue	Blue	Blue	Green	Orange
	Low	Blue	Green	Green	Green	Green	Green	Green	Orange
	Medium-low	Green	Green	Green	Green	Green	Yellow	Yellow	Orange
	Medium	Green	Yellow	Yellow	Yellow	Yellow	Yellow	Orange	Red
	Medium-high	Yellow	Yellow	Yellow	Yellow	Yellow	Orange	Orange	Red
	High	Orange	Orange	Orange	Orange	Orange	Orange	Red	Red
	Very high	Orange	Red	*	Red	Red	Red	Red	Red
	No critical load								
	No Exceedance score	Yellow	Not possible to assess	Not possible to assess	Not possible to assess	Not possible to assess	Yellow	Orange	Red

Blue = not impacted and no threat

Green = may not be impacted but possible threat

Yellow = may not be impacted but under high threat

Orange = adversely impacted and unable to recover OR favourable but will become unfavourable in foreseeable future

Red = impacted, unfavourable

Annex 3 Initial List of Information Sources Used in Air Pollution Assessment (not exhaustive)

Evidence and Data	Source	Data Holder
Common Standards Monitoring Ecological data	Designated Sites Viewer https://designatedsites.naturalengland.org.uk/	Natural England
Site condition in each Site of Special Scientific Interest		
Conservation objectives for internationally important sites	Natural England Access to Evidence website http://publications.naturalengland.org.uk/	
Site Improvement Plans for internationally important sites		
Site relevant Environmental Benchmarks	Air Pollution Information System (APIS) www.apis.ac.uk	Centre for Ecology and Hydrology (CEH); APIS Steering Group
Background pollution (Concentration Based Estimate of Deposition)		
Source attribution (FRAME model)		
Sensitivity of notified features (eg habitat)		
Background Pollution (UK-Air)	Defra UK-Air website https://uk-air.defra.gov.uk/	Defra
Location of habitat (Priority Habitat Inventory layers)	WebMap2 (internal only)	Natural England
Environmental Permits applied for and issued	https://data.gov.uk/	Environment Agency
Planning permission applied for and issued	Planning Portal	Local Planning Authority
Traffic projections	Local Authority Websites	Local Planning Authority
Prediction of risk from NOx for SACs near roads; maps and risk rating	NECR 199 and 200 on NE access to evidence website	Natural England
Initiatives in area to reduce or control air pollution	Some open data and some available upon request	Any stakeholders
Sites visited/monitored by Environmental Health Officers for air emissions		Local Planning Authority
Habitat survey or air quality data		NGOs, Local Authority; Regulators

SCHEDULE 2 - PRICES

1. FEES

Notwithstanding the general obligations under clause 3.3 of the main agreement, a Valid Invoice shall also give details of the hours which the Supplier has worked and the Services which it has provided.

2. EXPENSES

The Authority shall reimburse any reasonable travel expenses properly and necessarily incurred by the Supplier in the course of the Contract Term at the rate set out in this Contract, if no rate is provided reasonable travel expenses properly and necessarily incurred shall be reimbursed subject to prior authorisation by the Authority in writing and production of receipts or other appropriate evidence of payment.

Pricing Schedule:

Category of Person	Daily Rate (£)	Estimate of Days required to complete project	Total Price
--------------------	----------------	---	-------------

Total price = £41,400 ex VAT

Travel and subsistence costs not to exceed £1,000 ex VAT

Invoicing Schedule for Adverse Effects Framework Project

Invoicing aims to have two parts. The first is an invoice for the majority of project spend by 26 March 2019. The accrued remainder should be invoiced at the end of the project (28 June 2019) although the contract allows for a four week grace period.

Task No	Description	Date recommended for invoice
WP1	Data collation and evaluation	Draft Complete

1a	Select sources of evidence	26 March 2019
1b	Agree list of evaluation criteria and draft justification document	
1c	Apply criteria to data sources	
1d	Report initial findings on data sources	
1e	Consult stakeholders at Workshop (same as in 3b)	28 June 2019
1f	Compile findings into final report	
WP2	Stocktake of existing assessment approaches	Draft complete
2a	Review other country approaches and draft report	26 March 2019
WP3	Advice Framework and Caselaw	
3a	Draft materials for workshop	26 March
3b	Hold workshop (same as 1e)	28 June 2019
3c	Incorporate into framework options paper and final recommendations report	
WP4	Case studies and demonstration of framework	
4a	Agree case study scenarios for workshop	26 March 2019
4b	Compile initial case study evidence	
4c	Finalise case studies	28 June 2019
Wrapup	Report signoff; Complete filing and invoicing	28 June 2019

Natural England Travel and Subsistence

All Travel and Subsistence should be in line with Natural England's Travel and Subsistence Policy. Claims should always be supported by valid receipts for audit purposes and must not exceed any of the stated rates below. Should the stated rate be exceeded, Natural England reserve the right to reimburse only up to the stated rate.

Rail Travel

All Journeys – Standard class rail unless a clear business case demonstrating value for money can be presented. This includes international rail journeys by Eurostar and other international and overseas rail operators.

Mileage Allowance

Mileage Allowance	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
Private cars and vans – no public transport rate*	45p	25p
Private cars and vans – public transport rate	26p	26p
Private motor cycles	24p	24p
Passenger supplement	5p	5p
Equipment supplement**	3p	3p
Bicycle	20p	20p

*NB the 'no public transport rate' for car and van travel can only be claimed where the use of a private vehicle for the journey is essential e.g. on grounds of disability or where there is no practical public transport alternative. If the use of the vehicle is not essential the 'public transport rate' should be claimed.

** Under HMRC rules this expense is taxable.

UK Subsistence

Location	Rate
London (Bed and Breakfast) including anywhere within the M25	£115
UK (Bed and Breakfast) Major cities (which includes the following: Aberdeen, Birmingham, Belfast, Bristol, Cardiff, Coventry, Edinburgh, Glasgow, Harlow, Leeds, Liverpool, Manchester, Middlesbrough, Newcastle, Oxford, Portsmouth, Reading, Sheffield, and York).	£75
Accommodation elsewhere (Bed and Breakfast)	£70

SCHEDULE 3 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority, who may take account of the view of the Supplier, 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:
data.protection@defra.gov.uk
3. The contact details of the Supplier Data Protection Officer are:
[Insert Contact details]
4. The Supplier 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 Supplier is the Processor in accordance with Clause 13.1.
Subject matter of the processing	Services are in relation to advising on a framework for decision-making to manage risk of challenge and provide a transparent, strong rationale for future advice on habitat impacts as a result of air pollution – No personal data processed
Duration of the processing	20/02/2019 – 31/07/2019
Nature and purposes of the processing	The service delivered under this contract relates to a framework process for providing advice on habitat impacts as a result of air pollution. Therefore there is no personal data processed.
Type of Personal Data	None

Categories of Data Subject	N/A
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	N/A