



Department  
for Environment  
Food & Rural Affairs

# Short Form Contract Contract for Services

Contract Reference ITT\_4545

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# 1. Interpretation

## 1.1 In these terms and conditions:

Term	Description
“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Contractor constituted by the Contractor’s acceptance of the Award Letter via Bravo;
“Award Letter”	means the letter from the Customer to the Contractor printed above these terms and conditions;
“Bravo”	means the Customer’s electronic contract management system
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  Government Department;  Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  Non-Ministerial Department; or  Executive Agency;
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Contractor”	means the person named as Contractor in the Award Letter;
“Controller”	has the meaning given in the GDPR;

“Customer”	means the person identified in the letterhead of the Award Letter;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) 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 Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“DPA 2018”	means the Data Protection Act 2018;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Contractor in writing;

“Law”	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply;
“LED”	means Law Enforcement Directive (Directive (EU) 2016/680);
“Party”	the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	has the meaning given in the GDPR;
“Personal Data Breach”	has the meaning given in the GDPR;
“Processor”	has the meaning given in the GDPR;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Purchase Order Number”	means the Customer’s unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Contractor to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;

“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Sub-processor”	means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with Clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## 2. Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of the Contractor's notification of acceptance via Bravo within [7] days of the date of the Award Letter.

## 3. Supply of Services

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Contractor shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Contractor at any time request a variation to the scope of the Services. In the event that the Contractor agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Contractor.

## 4. Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with

clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.

- 4.2 The Customer may extend the Agreement for a period of up to 2 months by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

## **5. Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

- 5.7 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.7.1 provisions having the same effects as clauses 5.3 to 5.6 of this Agreement; and
  - 5.7.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.7 of this Agreement.
- 5.8 In this clause 5.8, “sub-contract” means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6. Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Contractor or the Staff shall be at the Contractor’s risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer’s premises, remove the Contractor’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.

- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## 7. Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8. Assignment and sub-contracting**

- 8.1 The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

## **9. Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the

Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

9.3 The Contractor hereby grants the Customer:

9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

- a. any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
- b. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

9.4 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

## 10. Governance and Records

10.1. The Contractor shall:

10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

- 10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2. The Contractor shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## 11. Confidentiality, Transparency and Publicity

- 11.1. Subject to clause 11.2, each Party shall:
  - 11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
  - 11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
  - 11.2.1. where disclosure is required by applicable law or by a court of competent jurisdiction;
  - 11.2.2. to its auditors or for the purposes of regulatory requirements;
  - 11.2.3. on a confidential basis, to its professional advisers;
  - 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
  - 11.2.5. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and
  - 11.2.6. where the receiving Party is the Customer:
    - a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

- b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## 12. Freedom of Information

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
  - 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period

as the Customer may reasonably specify) of the Customer's request for such Information; and

- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13. Protection of Personal Data and Security of Data**

- 13.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.
- 13.2. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 13.3. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, 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.

- 13.4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a. process that Personal Data only in accordance with Schedule 1 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - b. ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event 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 Agreement (and in particular Schedule 1);
    - 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:
      1. are aware of and comply with the Contractor's duties under this clause;
      2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      3. 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 Customer or as otherwise permitted by this Agreement; and
      4. 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 Customer has been obtained and the following conditions are fulfilled:

- i. the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Customer;
  - ii. the Data Subject has enforceable rights and effective legal remedies;
  - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
  - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

13.5. Subject to clause 13.6 the Contractor shall notify the Customer immediately if it:

- a. receives a Data Subject Access Request (or purported Data Subject Access 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 Agreement;
- 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.

13.6. The Contractor's obligation to notify under clause 13.5 shall include the provision of further information to the Customer in phases, as details become available.

13.7. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 13.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- a. the Customer with full details and copies of the complaint, communication or request;
  - b. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - c. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Customer following any Data Loss Event;
  - e. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 13.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 13. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- a. the Customer determines that the processing is not occasional;
  - b. the Customer 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 Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9. The Contractor shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- 13.10. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 13.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a. notify the Customer in writing of the intended Sub-processor and processing;
  - b. obtain the written consent of the Customer; and
  - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
  - d. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

- 13.12. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 13.13. The Customer 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 Agreement).
- 13.14. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 13.15. When handling Customer data (whether or not Personal Data), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.
- 13.16. This clause 13 shall apply during the Term and indefinitely after its expiry.

## 14. Liability

- 14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
- 14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and
- 14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Contractor be liable to the Customer for any:
- a) loss of profits;
  - b) loss of business;
  - c) loss of revenue;
  - d) loss of or damage to goodwill;
  - e) loss of savings (whether anticipated or otherwise); and/or

f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## 15. Force Majeure

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## 16. Termination

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

- 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
- 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
- 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Contractor shall:
  - 16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and
  - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## 17. Compliance

- 17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations

under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.

17.2 The Contractor shall:

17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and

17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.

17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

## **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 Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer 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 Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

## 19. Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## 20. General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## 21. Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22. Governing Law and Jurisdiction**

22.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

# SCHEDULE 1 - SPECIFICATION OF SERVICES

The Authority is the UK Government Department responsible for the environment, food and farming and rural affairs. The Authority's priorities are to secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy and secure food supply. Further information on the Authority can be found at: [Defra](#).

## 1. Aim

The aim of the project is to increase Defra's understanding of worldwide regulatory regimes for chemicals used across markets, to inform decision making post EU-Exit. As the owner of UK government policy on chemical regulation, this study will be used by Defra to inform future UK policy on chemical regulation in areas where we have the scope to set our own policy, as well as to understand the impact of differing approaches to chemical regulation on likely future trade negotiations.

The study should include high-level analysis of the different assessment criteria used under each chemical regime, how this can affect businesses in the UK, and an overview of the efficacy of different chemical regimes in protecting human health and the environment.

## 2. Scope

The study will be expected to consider the chemical regulatory regimes of 5 countries. The provisional list of countries for consideration is: US, Australia, Turkey, Japan and South Korea, subject to final agreement between the Authority and the Supplier within the first month of the project.

An in-depth desk study is expected, which is anticipated to require discussions with other countries' regulatory agencies and other third parties. It will be completed in conjunction with the Authority.

### In scope:

- The metrics that inform the assessment of risk to human health and environmental harm, costs to business of being under different chemical regimes, and how regimes use international information sharing in the processing of regulation.
- The study is expected to focus on all aspects of chemical regulation, including equivalents to the three principle European regulations: Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), Classification, Labelling and Packaging (CLP) and Prior Informed Consent (PIC).

## Out of scope:

- Possible changes resulting from EU exit.
- How regulation affects the optimality of trade deals, impacts and processes with respect to customs and borders.

### 3. Specific outputs

The Contractor shall deliver a written report that:

- Includes an executive summary;
- Is broken down by country, with a consistent reporting structure which will be agreed with the Authority;
- Contains a final inter-country comparison chapter, that compares the studied regulatory regimes, and considers the relative levels of environmental and human-health protection

The contractor should deliver a sample report for one country (the initial country will be agreed in advance with the Authority), within two months of the commencement of the project.

The final report shall address each of the following three themes for each country:

#### **Theme 1: Overview of chemical regulatory regime**

This section should include:

- Breakdown of the structure of chemicals regulation:
  - Overview of approach to chemicals regulation in the country;
  - Description and explanation of the metrics used to assess chemicals that are on the market, and an overview of procedures for approving chemicals to the national market (e.g. for REACH-like regimes, the registration process through to authorisation). This should include processes for both existing and new chemicals;
  - A list of known and proposed changes to regulation planned, including brief assessment of impact on existing and new chemicals, and the timelines associated with these changes.
- Analysis and risk assessment:
  - Analysis of the metrics used to assess the risk of chemicals on the market;
  - An analysis into the monitoring process behind chemicals regulation, including how the strength of environmental protection is measured and ensured;

- An assessment of the levels of human health protection that the chemical regulatory regime attempts to uphold, and how this feeds into the risk assessment of new and existing chemicals.

### **Theme 2: Data processes and information sharing**

This section should include all of the following that are applicable (recognising that they might not all be relevant to all countries being considered):

- Data processing
  - Details of any software used to process information, as well as the storage of information and costs associated with this;
  - The process through which the regulatory regime gathers and uses data from international businesses and chemical manufacturers.
- Information sharing
  - The legal requirements that accompany chemicals regulation in terms of making information public, including how freedom of information requests (or similar) are handled, and how this affects the evaluation of chemicals;
  - The extent to which the chemical regulatory regime relies on international information in reforming risk assessment processes and the evaluation of chemicals.

### **Theme 3: Costs to governments and international business**

This section will include:

- Costs to government
  - Costs of setting up the regulatory regime;
  - Costs of enforcing the regulation of chemicals.
- Costs to businesses
  - Qualitative description of costs to businesses within the country (supported by any quantitative evidence from the literature), and analysis of how different types of businesses operate under the chemical regulatory regime;
  - Qualitative description of approaches to maintaining international trade, (e.g. in REACH regime, businesses permitted to setup 'Only Representatives').

The report should conclude with a qualitative **inter-country comparison** of the studied chemical regulatory regimes, including:

- A comparison of regimes across the themes, including relative strength of the health and environmental protection afforded and consideration of the differing costs to UK's chemical exporting businesses in exporting to the countries studied;
- Discussion of any insights about regulatory approaches in general that can be drawn out, such as an assessment of how increased regulation affects the

availability of chemicals; the extent to which regulations can render certain chemicals more or less economically viable.

#### 4. Communcation and project steering group

A project steering group will be set up, with members of Defra policy and analyst teams, as well as representation from other Government departments. The group will meet (virtually or in person), at least once a month throughout the project.

This group will approve the approach to discussions with third parties (e.g. agree points of contact in other government agencies, industry or other parties), prior to the contractor commencing any such communications.

#### 5. Timetable and Governance: The table outlines proposed timelines.

Inception meeting	w/c 29 <sup>th</sup> October
<i>Deliverable 1</i> Delivery of proposed reporting framework for agreement, and agreement of approach to contacting third parties	w/c 12 <sup>th</sup> November
Monthly steering group meetings	Monthly
• <i>Deliverable 2</i> Delivery of draft report (single country).	w/c 31 <sup>st</sup> December 2018
• <i>Deliverable 3</i> Delivery of draft of final report.	w/c 11 <sup>th</sup> February
• <i>Deliverable 4</i> Delivery of final report and close-out meeting.	w/c 25 <sup>th</sup> February

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

## E01\_ Understanding of Specification of Requirements and the policy context Wood Environment & Infrastructure Solutions UK Limited Response

### The project aims

The aim of this project is to provide Defra with a detailed report that will enhance their understanding of the regulatory regimes for chemicals across the globe. The project will help inform Defra's policy-making decisions in the preparation for, and the future post EU-Exit. The project will provide a detailed analysis of:

- The different assessment criteria used under different chemical regimes;
- The potential implications for different approaches on businesses in the UK;
- The efficacy of different chemical regimes in protecting human health and the environment;
- Comparisons between the regulatory regimes in the different countries covered;
- The impact of different approaches to chemical regulation on future trade negotiations.

### Background

The regulation of chemicals within the United Kingdom are chiefly governed by the European Union but also international conventions. For example, the UN Global Harmonisation System (GHS) on classification of chemical hazards has been used to inform the development of the EU Regulation (EC 1272/2008) on the Classification, Labelling and Packaging of hazardous chemicals (CLP). However, the flexibility built into GHS means that it has been implemented differently in different areas, for example between the EU and US where classification of toxicology is different.

Additionally, the UK has directly ratified the UN Rotterdam Convention on hazardous chemicals, which is implemented within the EU as (EU 649/2012) the Prior Informed Consent regulation (PIC), governing the import and export of certain hazardous chemicals. Even when the UK leaves the European Union, most of the obligations based on PIC will need to remain unchanged in order for the UK to meet its international obligations.

Furthermore, it is important to recognise that UK industry trades on a global stage, so while the EU is our main trade partner, the UK already trades with all of the countries identified in the terms of reference and needs to meet the regional and national obligations from where they trade. For example, UK businesses develop both EU compliant safety data sheets for trade to the EU, but also USA material safety data sheets for trade into the US. Additionally, international organisations such as the OECD have developed exposure and risk assessment tools (e.g. OECD exposure toolkit) which can be used for both. Although we also know that such tools have been tailored further to meet specific needs under specific legislation such as REACH<sup>1</sup>. Therefore as part of this study it will be of high importance to keep three things in mind:

- i) The nuance in how different chemical regulatory regimes function and how UK industry manages these aspects. This will inform policy makers on the complexity of the situation, and how changes might affect the function of UK business and international trade.
- ii) The role of international requirements on UK regulation. This will inform policy makers on the level of flexibility that can be used when defining new regulatory approaches.
- iii) Inefficiencies within the existing EU regulatory framework. It will be helpful to policy makers to understand where inefficiencies exist, and how things could be improved while still maintaining sufficient alignment as not to present a barrier to trade.

These issues are particularly important, given Defra's 25 year environment plan<sup>2</sup> includes a specific goal on managing exposure to chemicals, and outlines a commitment to publishing an overarching Chemicals Strategy to, in part, outline an approach to exiting the EU.

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<sup>1</sup> REACH (Regulation (EC) No 1907/2006) – governing the Registration, Evaluation, Authorisation and Restriction of Chemicals.

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/693158/25-year-environment-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf)

## Policy context and approach

EU chemicals regulation consists of a complex framework of policy, spanning more than 100 pieces of legislation. This includes both Regulations, which implement requirements directly (while technically not existing within UK law) and Directives, which allow the UK some interpretation in how UK law implements them. The way chemicals are currently regulated in the UK (e.g. relating to information exchange, regulatory oversight, and freedom of movement of goods), is at present, directly linked to being an EU Member State,<sup>3</sup> operating under EU Regulations and Directives. This framework is built around the following key pillars:

- i) REACH. – Covering registration on chemical information and uses, chemical risk assessment, and control of substances of very high concern (Authorisation and Restriction).
- ii) CLP. – Covering classification and communication of chemical hazards.
- iii) PIC. – Covering control over the transboundary movement of specific hazardous chemicals.
- iv) Sector-specific legislation – governing the chemical contents, labelling and other requirements of specific types of products (e.g. cosmetics, plant protection products, toys, detergents, etc).

The current study will cover points i – iii above, and their regulatory equivalents in five countries outside the EU. Table 1.1 provides an overview of the five listed countries from the ToR, plus some possible other options. The contractor will agree with Defra within the first month which five countries to focus on.

Table 0.1 Chemicals regulation in other countries

Country	Regulatory regime
USA*	<a href="#">Frank R. Lautenberg Chemical Safety for the 21st Century Act (Update to the Toxic Substances Control Act)</a>
Australia*	<a href="#">Australia National Industrial Chemicals Notification and Assessment Scheme</a>
Turkey*	<a href="#">Turkish Regulation on the Inventory and Control of Chemicals (CICR)</a>
Japan*	<a href="#">Chemical Substances Control Law (CSCL) (1973, amendment implemented 1 April 2011)</a>
South Korea*	<a href="#">Chemical Substances Control Act and the Act on Registration and Evaluation of Chemicals (“K-REACH”)</a>
Indonesia	<a href="#">Government Regulation Number 74 regarding Hazardous and Toxic Material Management.</a>
Switzerland	<a href="#">Swiss Chemicals Ordinance (ChemO)</a>
Thailand	<a href="#">Thailand Hazardous Substances Notification (B.E. 2558)</a>
China	<a href="#">China REACH (MEP Order 7)</a>

\*Countries listed in the terms of reference

The project will include desk-based research and consultation interviews with key stakeholders from each of the countries (including regulatory agencies, trade associations, and NGOs) and the UK (e.g. chemical industries association and chemical businesses association). Table 1.2 provides an overview of the scope boundary that will form the key components of a final report presenting a comparison of regulatory regimes weighing up metrics of cost, human health and environmental protection, and impacts of changing regulation on availability and viability of chemicals. Delivery of a final written report will also require close collaboration with Defra, the project steering group and other government departments (such as BEIS).

Table 0.2 Key components of the project both in and out of scope

In Scope	
	<ul style="list-style-type: none"> <li>• The structure of the chemicals regulation e.g. the metrics used to assess chemicals that are on the market; an overview of procedures for approving chemicals to the market.</li> <li>• Analysis and risk assessment e.g. of metrics used to assess the risk of chemicals on the market, of monitoring process, and of the required levels of human health</li> <li>• Data processes and information sharing upon which the regimes function</li> <li>• Costs to governments and international business of the different regimes</li> </ul>

<sup>3</sup> House of Commons Library Briefing Paper (2016), Number 7681, Chemicals Regulation

- Out of Scope**
- Possible changes resulting from EU exit.
  - How regulation affects the optimality of trade deals.
  - Impacts and processes with respect to customs and borders.
- 

## E02\_ Approach and Methodology

### Wood Environment & Infrastructure Solutions UK Limited Response

## Study Approach and Methodology

Our approach is intended to provide Defra with the high level summary needed to understand the functionality of different legislation against key metrics. This should allow comparison of different systems and an understanding of the efficacy and cost of different systems to protect human health and the environment. We will do this using the following set of steps:

- Development of metrics for comparative analysis of different regulations
- Development of a baseline case against those metrics (the EU position + UK's roles under international policy)
- Review of other systems against the metrics (USA, Japan, Turkey, Australia and South Korea) detailed in factsheets designed to be comparable
- Deeper analysis of data processes and information sharing (based on the metrics)
- Cost analysis (both to government and industry)
- Development of a final written report including factsheets and summary comparisons drawn between countries

### 1.1 Theme 1: Overview of chemical regulatory regime

Theme 1 will begin with the development of a set of metrics which will be used to characterise the different legislation regimes in a comparable way. In particular these metrics should include:

- Obligations of industry and government under different regimes (REACH, CLP, and PIC equivalents)
- What chemicals / uses are in scope and out of scope (e.g., polymers, pharmaceuticals, cosmetics)
- How high hazard substances are managed (SVHCs) and how high risk applications are managed (restriction)
- How hazard and risk are classified, quantified, and communicated (REACH and CLP)
- How and which substances are selected for PIC.

The metrics will allow direct comparison between different regulatory regimes but will also be supplemented by a brief narrative detailing the overall aims and approach of REACH, CLP, PIC and their equivalents. The metrics will be discussed and agreed with Defra in advance of developing a baseline and will be used to develop a proposed reporting framework for deliverable 1 (in Mid-November). The metrics will also form the key basis for the cost calculation exercise under Theme 3.

Following the development of the metrics, we will complete a baseline analysis (using literature and third-party sources) to typify the existing systems utilised by the UK as part of the European Union. This analysis will also build on quantitative data for the number of UK companies and chemical substances that are currently governed by the EU. Wood has previously completed studies on the cumulative cost benefits of chemical legislation and performed a fitness check of most relevant chemicals legislation (which had a key focus on risk assessment and risk management measures). Furthermore, where the global harmonisation system (GHS) has a fundamental role in CLP, and where the UN Rotterdam and Basel Conventions have key roles for the PIC regulation, we will also complete an analysis of how these have been implemented for the EU. This will be key for the UK who also has direct obligations under these international policy areas.

We intend to provide the baseline EU position to Defra as an interim deliverable 2 (as per the RfQ) before the 4<sup>th</sup> of January 2019. Following discussion with Defra and final refinement, we will proceed to repeat the literature review and desk study process for the other four regulatory regimes (USA, Japan, Turkey, Australia and South Korea), obtaining key information from online sources including peer-reviewed studies,

grey literature and supplementing this with third party discussions undertaken in line with Theme 2 and 3 data gathering (detailed further in Theme 2 below).

### Outcome

The final step of Theme 1 will be the development of 5 factsheets detailing the functionality of each regulatory regime based on the metrics and supplemented with a brief narrative providing the aims and overview of the legislation. The factsheets will also provide details of related legislation for chemicals covering any aspects that are out of scope under REACH, CLP, PIC or its equivalents.

### 1.2 Theme 2: Data processes and information sharing

For each of the 5 countries under consideration we will seek information on the data management architecture, software used, and legalities associated with the sharing of information through consultation. This consultation step will be conducted with third parties from the 5 countries (e.g., government agencies and industry representatives) once contacts are agreed with Defra, and will gather additional insights, fill gaps or get into more detailed considerations for specific aspects of the data and information sharing aspects of regulatory regimes in each of the different countries being considered.

Our proposed approach to delivering the consultation of stakeholders comprises phone interviews and/or questionnaire completion if phone interviews are not possible. This approach will allow collation of perspectives from industry and regulatory agencies to foster an ongoing dialogue with key parties. A first step of our consultation will be the mapping of key stakeholders, defining their expertise and knowledge of chemical regulation in that specific country. Points of contact will be agreed with Defra and the project steering group during development of deliverable 1 in mid November to establish adequate knowledge sharing mechanisms between the steering group and the project team. We will aim to consult one agency representative and at least one industry representative from each country. Each of the interviewees will be added to a ‘consultation log’, with potential actions assigned to team members. The table below provides an example.

Table 0.1 Consultation log

Stakeholder/ & Country	Organisation/ contact details etc.	Cooperation critical to success	Current orientation	Key issues/ Concerns	Assigned to	Record of contact	Next steps
Stakeholder A / US		Necessary	Supportive, but time constrained	Concerned about confidentiality	Project Director	Interview 01/12/2018	Send questionnaire to complete

### Running expert interviews (via telephone)

Targeted stakeholders will be selected for in-depth telephone interviews in line with the budget allocated. The telephone interviews will be scheduled at the times most convenient for individual consultees. We will use semi-structured interview guides, which will help us ensure consistency between the topics covered in the interviews, while at the same time providing some flexibility for interviewees to raise any relevant issues that were not initially covered by the guide. Prior to the conversations, we will send a short note covering the aims for this project along with an overview of the scope and key themes of this exercise. We plan to run the interviews in English but acknowledge this may not always be possible due to a language barrier. In these cases, a written questionnaire will be provided.

Stakeholder and information management will be important to enable effective and efficient performance of the project. Information collected from interviews will be systematised and summarised using Excel. This will facilitate a triangulation of data from different sources, including our literature review. The consultation log spreadsheet will be used to document all communication, clearly detailing when activities occurred and which team member carried out any telephone, e-mail or other contact. Our project team has successfully used this consultation management system in previous projects. It allows the project team, project manager and Defra to quickly and easily understand the current status of the data collection at any time in the project. Also in the event that a team member is unexpectedly unavailable this will allow another person to take over their role with minimal disruption to the project.

### Outcome

The outputs of this consultation with government agencies and industry representatives will be a detailed assessment of data management and information sharing legalities (along with costs of each regulatory regime as discussed further in Theme 3 below), which will feed into the reports developed for each country.

### 1.3 Theme 3: Costs to governments and international business

Theme 3 aims to compare the costs to governments and international businesses under different legislative regimes in 5 countries. It will build on the identification of relevant legislation from Theme 1 and the consultation described in Theme 2 and will provide a quantitative and qualitative assessment (for governments and businesses respectively) of these regulatory costs introduced by these legislation, put in perspective with regulatory costs borne by chemical companies and governments operating in the EU, as a baseline. Note that an overview of regulatory costs under the different REACH processes (authorisation, evaluation, registration and restriction) for both governments and businesses was carried out by Wood for Defra in 2018.

For each identified legislation, we will look at specific articles and obligations from which costs are likely to be incurred and we will describe the regulatory activity required by the legislation. We will further link these obligations and regulatory activities with the following cost categories, for which both CEPS (2013), OECD (2013) and the Better Regulation Toolbox (2015) provide useful references to existing methods, e.g. the standard cost model, etc.

- Monetary obligations: include registration fees.
- Administrative burden: includes costs resulting from administrative activities carried out to comply with information obligations included in legal rules.
- Capital and operating expenditures: legislation generates costs related to testing, investments in laboratory equipment, labour, labelling equipment, databases, and printing.

We will only consider incremental costs from legislation, i.e., costs that are additional to the costs that would emerge in the absence of legislative intervention, in other words, different from business-as-usual. It will be essential to avoid double-counting and to address both one-off and recurrent costs.

This will form the basis for an initial matrix (legislation versus cost category) that will visualise whether the analysed legislations actually carry costs for businesses and governments. In order to fill in the matrix, we will build on the initial (Theme 1) review of relevant literature, including in-depth screening of pieces of legislation to spot relevant indications on cost incurred; academic literature through Scopus and other relevant databases; policy documents at international and national level, previous impact-type assessments on sectors, ex-post evaluations of effective policies and regulations, existing sectoral studies; assessments, surveys and advocacy documents produced by chemical business associations; official statistics.

We expect that it will be difficult to compare information (in particular, quantified) derived from the literature review across the different countries and the EU as costs-related data is usually fragmented, regards different sub-groups, and is estimated based on different methodologies – with the exception of monetary obligations (e.g., registration fees under REACH), as identification and computation is straightforward as their amount is usually known and communicated.

#### Costs to governments

In order to have a better picture of already existing data, we will contact public authorities responsible for the legislation under the scope of this assignment in the different countries. A detailed questionnaire will be designed and agreed upon with Defra and submitted to relevant public authorities in order to collect primary data as well as existing secondary data, that will further feed the quantitative cost assessment. By filling in the questionnaire, public authorities will provide information about the typical cost per legislation. Teleconferences will take place in order to support public authorities in filling out the questionnaires and to guarantee their understanding of the main questions and cost categories.

#### Costs to businesses

Although there are extensive studies on the implementation, enforcement and impacts of various pieces of legislation, the available literature contains few references to the quantification and magnitude of regulatory costs, in particular for businesses. The analysis of cost will thus be carried out qualitatively, and where available, quantitative estimates will be provided. Given the heterogeneity of the chemical industry, we will highlight differences in magnitude and type of cost as follows:

- For companies across the value chain: from manufacturer (upstream), to formulator, to downstream users and retailers (distributor).
- For companies across sectors: we will highlight whether different treatments apply to different sectors, whether exemptions are applied for certain types of products, etc.
- By size of companies: we will indicate whether exemptions exist for smaller companies, etc.

### Outcome

The final outcome of this task will be to provide an overview of the comparative burden of the regulatory framework between the different countries and the EU for both governments and businesses. Although the outcome of this task will be mostly qualitative, any quantitative information encountered (in particular for governments) will be added to our comparative analysis. We will highlight, using a colour-matrix, the cases where costs are likely to be higher, similar or lower than in the EU.

### 1.4 Final report output

Following completion of the desk study and the consultation, we will provide Defra with a concise final report (in the week commencing 25<sup>th</sup> Feb 2019 of c. 50 pages) covering each of the themes for each of the 5 countries using data derived from the approach outlined above. This will be paired with an executive summary providing an overview of advantages and disadvantages of each of the country regimes including monetary considerations (quantitative data and qualitative descriptors) for the government and businesses. A final section on inter-country comparison will consider the cost implications of the UK exporting to the countries studied and the level of environmental protection offered by each of the different country regimes. Further implications of an increased or changing chemical regulatory sphere on the economic viability of chemicals and alternatives in the future, and the impacts this could have on their availability for in the UK, will be discussed qualitatively in this final inter-country chapter.

Any additional requirements with regard to the format and content of the summary report will be discussed with Defra during the project and a draft version of the final report will be delivered two weeks prior (in the week commencing 11<sup>th</sup> February 2019) for comment.

## E03\_ Project planning, management and delivery

Wood Environment & Infrastructure Solutions UK Limited Response

### Project planning, management and delivery

This section outlines our plan to manage the project and deliver Defra a final report summarising each chemical regime including analysis on how this may affect businesses in the UK and the efficacy of each regime in protecting human health and the environment.

### Project Organogram

The work will be completed by members of Wood Environment & Infrastructure Solutions both in the UK and US who have key relevant experience in chemical policy and the economics of chemical regulatory regimes. We will manage the contract using individuals with experience in managing previous Defra contracts including:

[REDACTED]

[REDACTED]

The Project Director has overall accountability for the contract and his role is to oversee, influence and support the project manager to ensure that the overall project objectives are met.

In the event that either of these key individuals are unable to manage the contract, we have put in place a contingency project manager and director who will take over if necessary.

An appropriate escalation procedure:

- Through agreeing the project scope, good project management and working constructively within the contract, we will seek to ensure that problem resolution is not needed. However, should a conflict arise then our company management structure and our project management organisation are designed to ensure that issues are dealt with as they arise and at the most appropriate level of the organisational hierarchy and preferably within the project team.
- Where problems arise that cannot be rapidly resolved by the individuals immediately involved, or through the customer and our project manager, the responsibility for resolution will rest with our project director, who may draw upon others in the business for assistance. See the reporting lines set out above in this document.
- The response to any problem when it arises will be first to resolve the problem and then to identify where responsibility lies and develop procedures to prevent recurrence.

### **Project plan and Gantt chart**

#### **Deliverables and key milestones**

A project Gantt chart is provided below to demonstrate the timings of project components/tasks and key deliverables. Given the relatively short timescale of the project it is anticipated that both the in-depth desk study and the discussions held with necessary third parties and regulatory agencies take place simultaneously following final agreement on the countries and agencies included, within the first month of the project.

The early focus will be on engagement with third party individuals from the (agreed) specific chemical agencies to support the gathering of information on data platforms/information sharing and costs associated with regulatory implementation. As requested in the RfQ we have allocated time for monthly steering group meetings which will be attended by the project manager plus other team members as needed. Further face to face meetings will be held on a frequency agreed during the inception meeting with other informal contact (via email) utilised as needed (proposed bi-weekly).

Project Tasks/ Sub-tasks	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19
Theme 1. Desk study of current regulatory regimes in 5 countries inc. human health and environmental protection analysis					
Theme 2 and 3. Consultation with countries regulatory agencies to obtain data processing information and cost estimates					
Theme 3. Developing cost estimates of regulatory regime to government and business					
Final report writing					
<b>Meetings</b>	①	①	②	③	④ ⑤
<b>Deliverables</b>					
Proposed reporting framework and third party approach				②	
Draft report for single country					
Draft final report					④
Final report					

① Inception meeting      ② ③ ④ Monthly PSG meetings      ⑤ Final close out meeting  
 Interim Report                      Draft report                      Draft final Report                      Final report

### Quality Assurance and monitoring progress

All projects are conducted following the companies Quality Control protocols. This includes development of a project quality plan (PQP) detailing scope, milestones, and a progress tracker (this can be provided upon request). Appointment of a Project Director to oversee quality, which includes regular meetings with the project manager to monitor progress. All deliverables undergo a technical quality check. The Project manager will also hold regular meetings with the Defra desk officer and the project steering group to update on progress, including specific discussion and agreement on approach to third parties and key individuals in regulatory agencies in the other 5 countries (provisionally agreed).

### Risk management and contingency plans

Project specific risks are outlined in Table 1.1 in Appendix A with appropriate measures to mitigate their impact on project delivery. In addition to this, continuity of Service will be achieved in the event of staff changes using the following:

- Staff availability will be provisionally secured following the submission of this proposal and confirmed immediately upon confirmation to proceed. This is done using our dedicated resource planning tool.
- Wood has in place a staff retention strategy, the core of which is based on investing in the development of our staff to maximise their motivation and ability to contribute to shared success.
- We have identified sufficient numbers of staff within the team to ensure that at least two people are familiar with all key elements of the work.
- We have also identified staff members outside the core team with comparable experience who could be brought in, in the event that staff changes are required. We would also seek to recruit staff with comparable experience in the event of staff leaving the business.

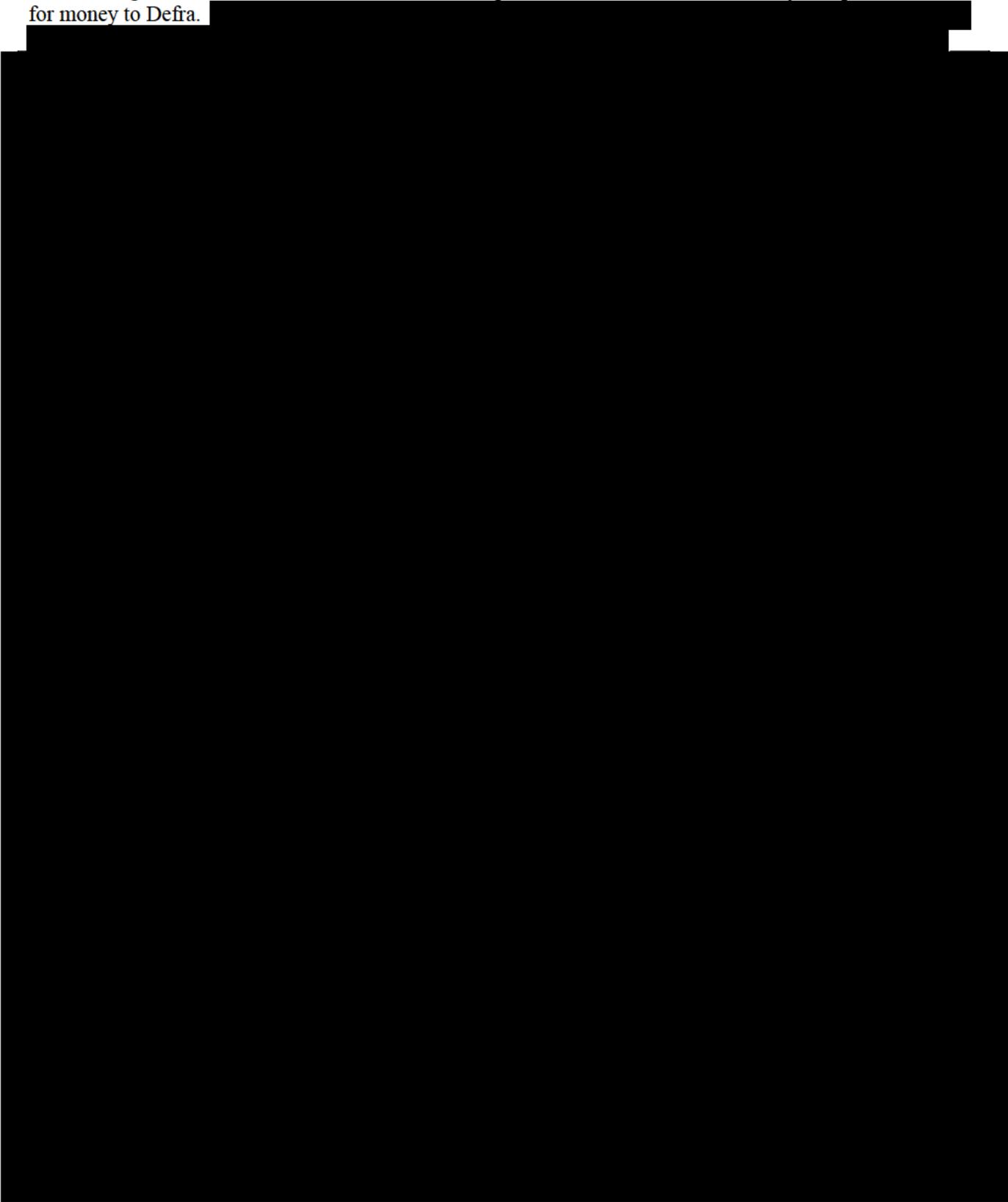
Table 0.2 Project specific risk register

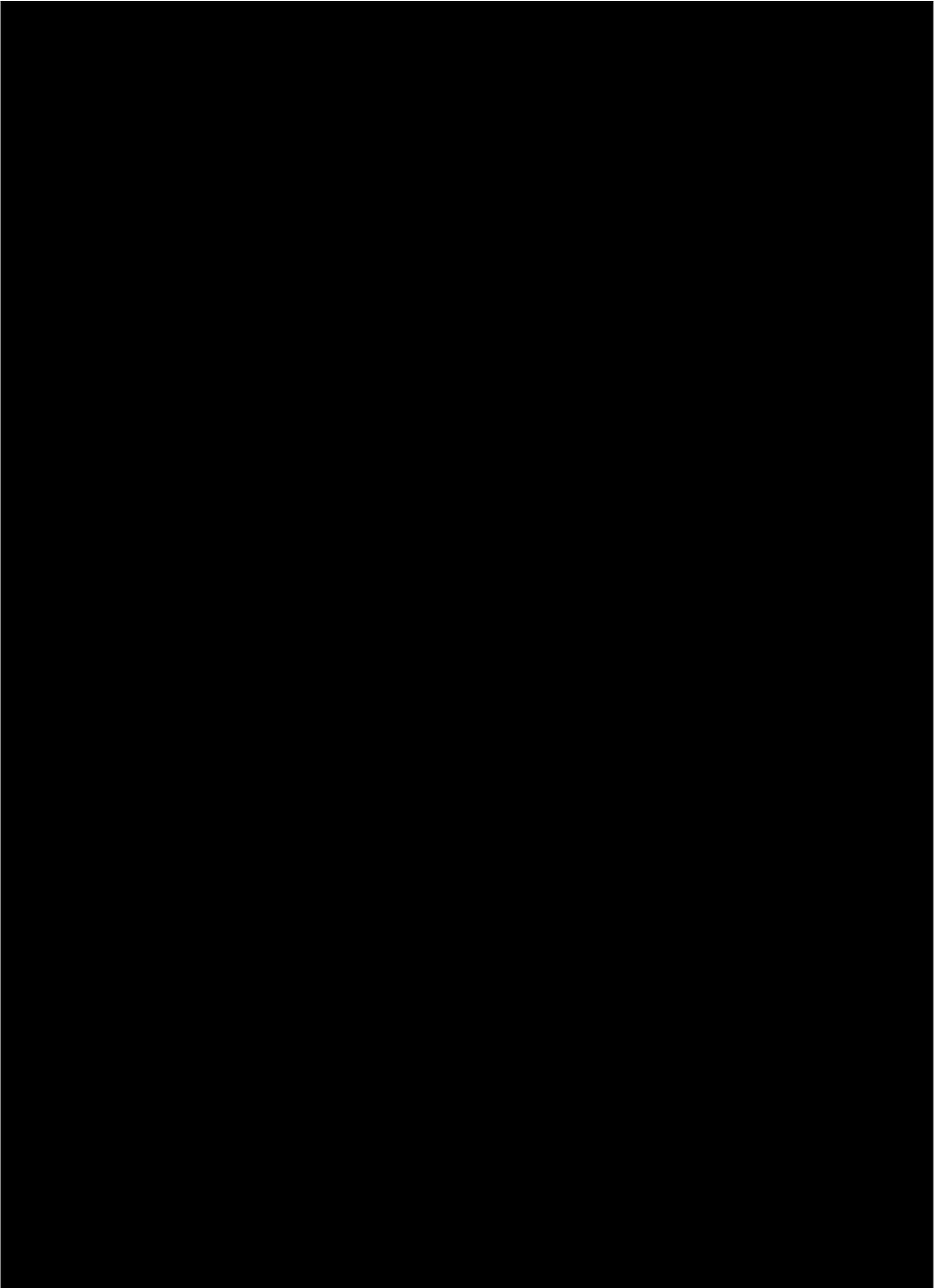
Risk event	Probability	Impact	Mitigation measures to ensure risk is 'low'
<b>The project team overlooks key chemical regulation documents</b>	Low	Low-medium	Ensure that a thorough online and literature search is carried out – also contact government agencies direct (once agreed) to identify sources. Involve Defra and the project steering group in the selection of relevant source documents from inception.
<b>Key contacts do not participate.</b>	Medium	High	We have set in place stakeholder management system to track the support or resistance of stakeholders to the project, and to trigger direct actions in specific cases. We will show flexibility in the interview processes and indicate we can arrange both phone and interviews or questionnaire completion. If necessary we will request help from Defra and the project steering group if responses are not forthcoming.
<b>Limited language capability within country representatives</b>	Medium	Medium	We will ensure early engagement with key interviewees following agreement with Defra, to seek out the most appropriate person with English language skills. If a telephone interview is not possible due to language constraints, we will provide a questionnaire which can be completed in writing instead.
<b>Unable to obtain cost data for Theme 3</b>	Medium	High	Wood have previously completed studies on the cost of chemical regulation so some data is available which may be extrapolated to other countries.
<b>Key staff member leaves company</b>	Low	Medium	Wood carries out succession planning to ensure there is not only one member of staff who can fulfil a particular technical function. Additional Wood colleagues from the same technical team could be brought in to fulfil technical roles, if necessary.
<b>Lack of time to produce timely deliverable</b>	Medium	Medium	We ensured adequate planning, as per the Gantt chart. We also ensure broad level of expertise and sufficient staff numbers. We will schedule tighter deadlines for interview completion to mitigate this risk.
<b>Changes in timescales or scope</b>	Medium	Medium	As stated above, we have ensured sufficient staff are available, with additional team members able to step in if necessary. Variation to the scope will be agreed with Defra prior to changes along with their impact on timely delivery of reports.
<b>Cost overruns jeopardise quality of delivery</b>	Medium	Medium	We will identify possible cost overruns due to project changes and making sure that the impacted organisations agree on the new budget figures to meet the effectiveness constraints.
<b>Client rejection of report</b>	Low	Medium	We will ensure agreement to scope at start of specific contract (i.e. inception meeting and minutes) and ensure regular contact on progress and findings throughout. Moreover, the contract builds in several 'interim reports and meetings'.

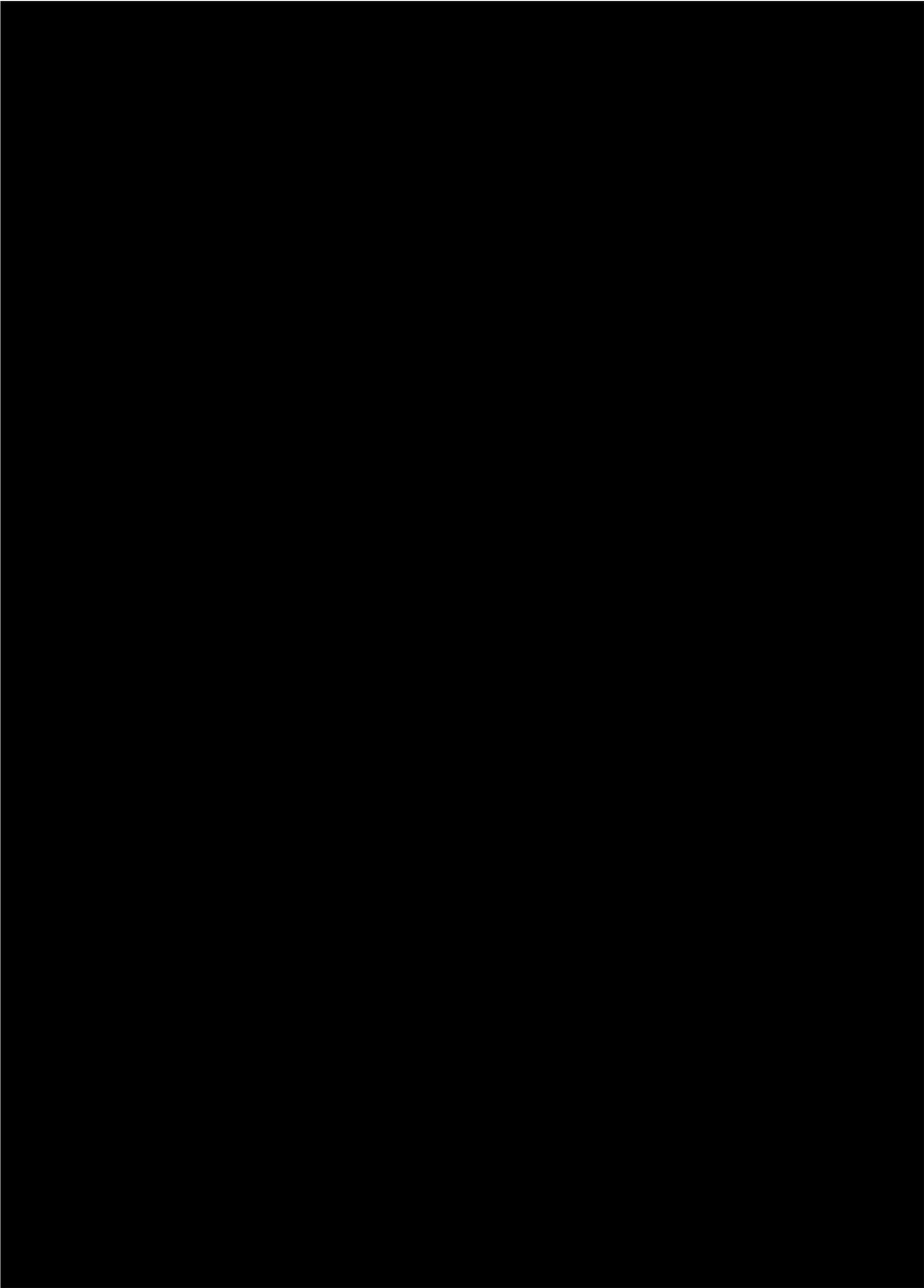
E04\_ Capability and expertise of proposed project team  
Wood Environment & Infrastructure Solutions UK Limited Response

**Project team**

Key personnel; their roles and responsibilities; and a brief summary of skills and experience are illustrated in the table below. We have included a compliment of experienced and junior staff, all with expertise in chemical regulation (both in the EU and US), allowing the work to be delivered in a way that provides value for money to Defra.





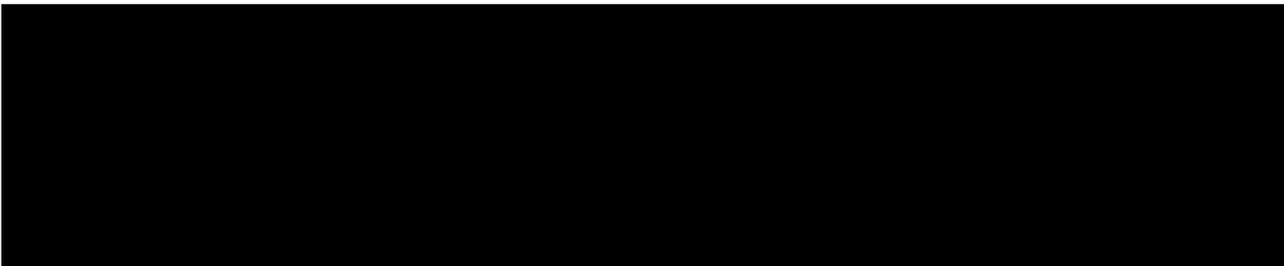
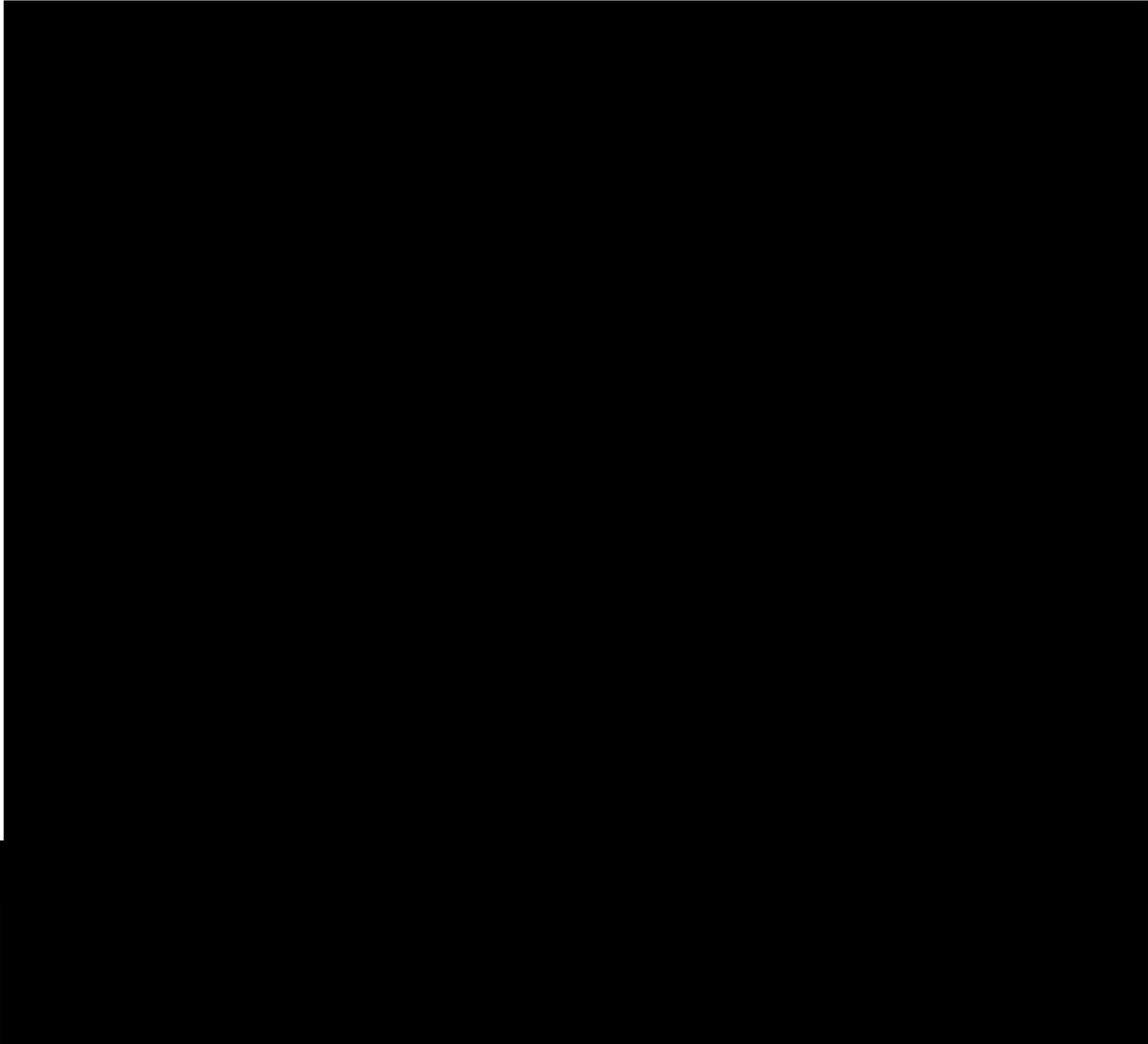




# SCHEDULE 2 – PRICES

1. The Authority will pay the Supplier no more than the fixed sum of

**£37,305.00 excluding VAT**



[Redacted]

[Redacted]

# SCHEDULE 1 – 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:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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	<i>The project is to increase Defra's understanding of worldwide regulatory regimes for chemicals used across markets.</i>
Duration of the processing	<i>29<sup>th</sup> October 2018 to 1<sup>st</sup> March 2019</i>
Nature and purposes of the processing	The chemicals regulatory data will be collated, processed and disseminated as necessary for the requirements of the project.
Type of Personal Data	<i>None.</i>
Categories of Data Subject	<i>Chemicals Regulatory Data.</i>

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>The data will be retained as it is required to inform chemicals advice.</i></p>
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