

**Agenda Item No. 4(c)**

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND  
INFRASTRUCTURE**

**30 July 2020**

Report of the Executive Director – Economy, Transport and Environment

**NATIONAL PROPERTY RESILIENCE FRAMEWORK**

(1) **Purpose of Report** To seek approval to utilise the Environment Agency's National Property Flood Resilience Framework in order to procure a Contractor to deliver survey work for the Property Flood Resilience Recovery Support Scheme.

(2) **Information and Analysis** The Department for Environment, Food and Rural Affairs (DEFRA) has made funding available, through the Property Flood Resilience Recovery Support Scheme, to install flood resilience and mitigation measures to properties and businesses affected by the floods in November 2019 and February 2020. It is estimated that there are just over 300 properties in the County affected by the November 2019 event and 160 properties by the February 2020 event who would qualify for this funding.

District/Borough Councils with 25 or more properties severely affected by the flooding are eligible for the scheme. The County Council, as Lead Local Flood Authority, is best placed to manage the scheme, given its previous experience in managing other grant schemes, along with its expertise in flood mitigation. District and Borough Councils have already confirmed the numbers of properties eligible for the scheme, which has already been reported back to DEFRA.

The District/Borough Councils eligible to access the funding are as follows:

- **November 2019** - South Derbyshire District Council, Derbyshire Dales District Council, Chesterfield Borough Council and Amber Valley Borough Council
- **February 2020** – Derbyshire Dales District Council, Erewash Borough Council and South Derbyshire District Council.

The scheme will enable properties and businesses, who were internally flooded on either of these flood events, to apply for funding to install flood

mitigation measures, to reduce the risk of flooding, for any future events which may occur.

Through the scheme, up to £5,000 per property or business is available. This includes £500 to undertake a survey of the building to determine the measures required. The survey is an obligatory requirement and essential to ensure that the right flood mitigation measures are recommended and installed. The Council's Flood Risk Management Team is managing the scheme, which involves the processing of applications, liaising with applicants, conducting surveys and arranging payment for successful applications.

It is proposed that the Council utilises the Environment Agency's National Property Flood Resilience Framework, to procure a Contractor to deliver the survey work for the Property Flood Resilience Recovery Support Scheme.

Utilising one of the Contractors off the National Property Flood Resilience Framework means that all of the due diligence work has already been undertaken, which will not only ensure that the Contractor is fit for purpose, but also reduce the timescales for procurement and award of contract which are very tight, given that the Property Flood Resilience Recovery Support Scheme claims must be completed by February 2021.

The impact of not taking this approach to the survey work would mean that the individual applicants would be responsible for employing a suitably qualified surveyor, and there is a high risk that the surveys being submitted, as part of the overall application, would be sub-standard and would not meet the criteria set by DEFRA.

It is envisaged that the scheme (for the November 2019 event) will be open for applications by the beginning of August 2020 and end on 31 October 2020. Timescales for the February 2020 scheme are yet to be confirmed.

In accordance with the County Council's Financial Regulations a business case for the use of the Environment Agency's National Property Resilience Framework has been approved by the Director of Finance & ICT and the Director of Legal Services. The award of contract from the Framework is delegated to the Strategic Director Environmental, Economy and Transport in accordance with Financial Regulations.

**(3) Financial Considerations** Existing resources within the Flood Risk Management Team will be utilised to both procure and manage the survey contractor. Administrative support is also required to assist the Flood Team, whilst the scheme is open (three months), which will cost £5,000 (Grade 6

post). This funding has been identified from a vacant post in the Business Support Team.

All costs (up to the value of £500) associated with the survey work for the individual properties and businesses will be claimed back through the Property Flood Resilience Recovery Support Scheme (DEFRA). Based upon the number of properties eligible for the funding for each flood event, the total cost for the November 2019 event will be £150,000, and £80,000 for the February 2020 event.

DEFRA has already made an upfront pre-payment of £66,652 to the Council, and this will be utilised to fund some of the initial survey work.

(4) **Legal Considerations** The County Council has a duty under the Flood and Water Management Act 2010 to manage local flood risk, and under the Local Flood Risk Management Strategy, there is an objective to aim to reduce the level of flood risk to the people of Derbyshire. Managing this scheme will enable properties and businesses to apply for funding to install flood mitigation measures, to reduce the risk of flooding, for any future events which may occur.

The Director of Legal Services will advise on call-off of the contract under the Framework Agreement, which will be way of mini-competition.

(5) **Equality and Diversity Considerations** An Equality Impact Assessment (EIA) was undertaken in support of the Local Flood Risk Management Strategy (LFRMS). The LFRMS has an objective embedded within it, to aim to reduce the level of flood risk to the people of Derbyshire. The main concerns in the EIA related to Public Health and the impacts of recurrent flooding on mental health and the effects of flooding on the elderly, infirm, pregnant and disabled, who may not be so able to adapt to/or be capable of making themselves resilient to the effects of flooding or deal with flooding should it enter or confine them to their property. The LFRMS takes on board these issues and seeks to address them through strong emphasis on preparation and development of personal resilience. Managing this scheme will enable properties and businesses to apply for funding to install flood mitigation measures, to reduce the risk of flooding, for any future events which may occur.

(6) **Environmental Considerations** Utilising the National Property Flood Resilience Framework and, therefore, using one Contractor to undertake all of the surveys in Derbyshire, will generate local efficiencies of scale, reduced travel time, and a level consistency in the flood risk recommendations made for each property, which will reduce the overall carbon footprint for the entire scheme.

(7) **Social Value Considerations** Ensuring each scheme applicant has the most beneficial flood mitigation products for their property, based upon the expert surveys undertaken by the Contractor, will produce an intangible social value to health and well-being, simply by reducing fear of flooding, of loss of property and of the long term misery caused by the invasion of the home or business.

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, human resources, health, property and transport considerations.

(8) **Key Decision** No.

(9) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(10) **Background Papers** Procurement Business Case for the “National Property Resilience Framework”.

(7) **OFFICER’S RECOMMENDATION** That the Cabinet Member approves the use of the Environment Agency’s National Property Flood Resilience Framework to procure a Contractor to deliver survey work for the Property Flood Resilience Recovery Support Scheme, as detailed in the report.

**Mike Ashworth**  
**Executive Director – Economy, Transport and Environment**



# **Procurement Business Case Protocols 2a, 8, 9 and 10 (Over £50,000)**

**National Property Resilience Framework**

**Please send forms requiring  
Procurement / Legal / Finance approval to:**

**[BusinessCase.Review@Derbyshire.gov.uk](mailto:BusinessCase.Review@Derbyshire.gov.uk)**

## Version Control

Version	Name	Date	Comments
1	R Ward	18/03/20	Draft

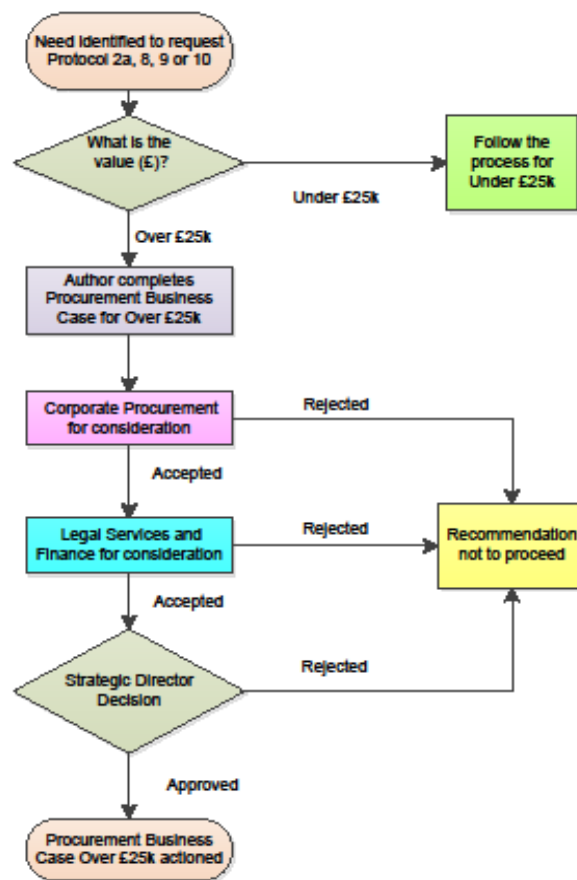
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## **Approval Process**

- 1.1. Author completes section 1 to 9 and emails the document to Corporate Procurement (e.g. contract manager).
- 1.2. Corporate Procurement complete section 10 if supporting the recommendation(s) and email the document to the Director of Legal Services and Director of Finance & ICT (or their representatives under the Scheme of Delegation) for approval.
- 1.3. Legal Services complete section 11 if they support the recommendation(s) and email the document back to Corporate Procurement and the author.
- 1.4. Corporate Finance complete section 12 if they support the recommendation(s) and email the document back to Corporate Procurement and the author.
- 1.5. If approved by Legal Services and Corporate Finance, the author liaises with their Strategic Director for approval.
- 1.6. The Strategic Director (or their representative under the Scheme of Delegation) completes section 13 if they support the recommendation(s).
- 1.7. The author emails the fully approved copy to Corporate Procurement and appends it to the relevant Cabinet or Cabinet Member report if the value of the award exceeds £100,000.
- 1.8. If the document is not approved at any stage in this process, it will be returned with an explanation and proposals for resolution.





# **1 Background & Business Need**

We are seeking to use Protocol 2a to utilise the Environment Agencies National Property Flood Resilience Framework (**'Framework'**).

Government (DEFRA) has made funding available to install flood resilience and mitigation measures to the properties and businesses affected by the floods in November 2019.

Up to £5000 is available per property or business, including £500 to undertake a survey of the building to determine the measures required.

The Council has decided that in order to ensure that the surveys undertaken for each property are robust and fit for purpose, we shall utilise one of the 2 Contractors off this Framework to undertake these surveys which will be up to the value of £500 per property.

It is estimated that there are just over 300 properties in the County who would be eligible for this funding, which would total around £150,000 worth of surveys.

The impact of not taking this approach to the survey work, would mean that the individual applicants would be responsible for employing a suitably qualified surveyor, and there is a high risk that the surveys being submitted as part of the overall application, would be sub-standard would not meet the criteria set by DEFRA.

The Council would be using Lot 1 of the Framework, which is for Property Flood Surveys.

The Contractors in Lot 1 are set out as follows:

- JBA Consulting; and
- RAB Consultants Ltd

The Framework user agreement (including Terms and Conditions) is appended to this document, which the Council would need to agree and sign up to, in order to call off this particular Framework.

# **2 Objectives**

The Framework will deliver Property Flood Surveys to over 300 properties and businesses between April 2020 and January 2021.

# **3 Scope**

The Framework will only cover the following Districts, namely Chesterfield, South Derbyshire, Amber Valley and Derbyshire Dales. It will include both pre and post installation surveys and include a detailed report for each survey undertaken.

## **4 Benefits**

The benefits from utilising the Framework will be as follows:

- The Council will be utilising Contractors who are experienced in undertaking this type of work;
- Both Contractors will have already been through the due diligence process in order to get onto the Framework; and
- Utilising an experienced Contractor to undertake all surveys will ensure a satisfactory level of consistency and quality.

## **5 Options Appraisal**

There are 2 options available in order to meet our requirements:

Option A – Procure a Contractor through open tender. Although this would meet our requirements, the Contractor would have to go through detailed evaluation and due diligence, all of which would take additional time and resource to undertake. It is imperative to award the survey work to a Contractor as soon as possible, as there is an expectation from both residents and members to deliver this work in a timely fashion, so they are protected from future flood events; or

Option B (Preferred) - Utilise a Contractor off the Framework. This can be done relatively quickly, though a mini completion, and there is the assurance that any Contractor will have met all of the pre-qualifying and due diligence requirements under the Framework.

## **6 Timescales**

Maximum length of Contract will be from April 2020 to January 2021.

## **7 Costs**

Estimated Contract value is £150,000.

## **8 Risks & Issues**

Whitehouse Construction Ltd, who are situated in Ashbourne, Derbyshire and could undertake this type of work, are already on the Framework for Lot 2, which is for both Surveys and Installation. The Council does not wish to utilise Lot 2 for this purpose.

## 9 Recommendation

I confirm that following reasonable enquiries, the facts stated in this business case are true to the best of my knowledge.

On the basis of this business case, it is recommended that the Director of Legal Services and the Director of Finance & ICT approve: Signing and Using the National Property Resilience Framework.

As the costs associated with this requirement exceed £150,000, a report will be submitted for consideration to the Cabinet Member meeting on 30/07/2020

Name:	Richard Ward		
Job Title:	Senior Project Engineer		
Department:	ETE	Date:	18/03/2020

## 10 Corporate Procurement

To be completed by a nominated representative of Corporate Procurement.

Corporate Procurement comments:			
Just as a note, Is their an option to make a direct award from the framework and are their any costs associated with the use of the framework			
Name:	Tim Dence		
Job Title:	Principal Procurement Officer	Date:	19/03/2020

## 11 Director of Legal Services Approval

To be completed by the Director of Legal Services, or their nominated representative under the Scheme of Delegation.

Legal Services comments:			
Approved with minor comments.			
Name:	S B Macdonald-Preston		
Job Title:	Principal Solicitor	Date:	10/07/2020

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## 12 Director of Finance & ICT Approval

To be completed by the Director of Finance & ICT, or their nominated representative under the Scheme of Delegation.

Corporate Finance comments:			
Name:	Pam Taylor (Deputising for Karen Howes)		
Job Title:	Senior Financial Accountant	Date:	13/07/2020

## 13 Executive Director Approval

To be completed by the departmental Executive Director, or their nominated representative under the Scheme of Delegation.

Name:	 Mike Ashworth		
Department:	ETE	Date:	16/07/2020

**DATED**

09/07/2020

**NATIONAL PROPERTY FLOOD RESILIENCE FRAMEWORK USER  
AGREEMENT**

between

**ENVIRONMENT AGENCY**

and

**DERBYSHIRE COUNTY COUNCIL**

IN RELATION TO THE USE OF THE ENVIRONMENT AGENCY'S

NATIONAL PROPERTY FLOOD RESILIENCE FRAMEWORK 2018-2022

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(i)

**THIS AGREEMENT** is dated 09/07/2020

## **PARTIES**

ENVIRONMENT AGENCY whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5AH (**the Agency**).

Derbyshire County Council whose principal office is at County Hall, Matlock, Derbyshire, DE4 3AG (**the Authority**).

Individually a "Party" and together "the Parties"

## **BACKGROUND**

- 1 The Agency has created the National Property Flood Resilience Framework (as defined below) in accordance with the Public Contract Regulations 2015 (as amended). The Agency has entered into Framework Agreements (as defined below) with all Suppliers for the duration of Framework;
- 2 The Agency are in possession of the Suppliers' Confidential Information (which includes the Pricing Schedule as defined below);
- 3 The Authority is a public sector organisation, who are able to utilise the Framework and wish to use the Framework for their own procurement needs;
- 4 The Agency may have made available and may wish to make available to the Authority certain Confidential Information. The Agency wishes to protect such information in the manner set out in this Agreement; and
- 5 In addition to the Confidential Information, the Agency requires the Authority to comply with certain provisions of the Framework Agreements and provide certain information which the Authority agrees to comply with and provide under this Agreement.

In consideration of the benefits to the Parties of disclosing and receiving the Confidential Information, the Parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

- (a) The following definitions and rules of interpretation in this clause apply in this Agreement:

**Agency IT System:** A-Site (or any replacement notified to the Authority by the Agency), which is the Agency's hosting collaboration website tool used for storage and holding of Agency documentation.

**Agreement:** this National Property Flood Resilience User Agreement

**Authorised Representatives:** the employee of the Authority stated in clause 14 of this Agreement (or an Agency approved replacement for the person named).



**Authority Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Authority and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when the banks in London are open for business.

**Call-Off Contract:** a contract under the Call-Off Terms between one of the Supplier's and the Authority following a mini-competition process using Schedule 4

**Confidential Information:** all confidential information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Agency or its employees, officers, representatives or advisers to the Authority and its Representatives after the date of this agreement that relates to the Framework Price Workbook, business, affairs, developments, trade secrets, know-how, personnel and suppliers of, including Intellectual Property Rights, of the Suppliers together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential,

but not including any information that:

- (i) is or becomes generally available to the public (other than as a result of its disclosure by the Authority or its representatives in breach of this agreement), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- (ii) was lawfully in the possession of the Authority without restriction before the information was disclosed to it by the Agency as evidenced by written records; or
- (iii) the Parties agree in writing is not confidential or may be disclosed; and
- (iv) is received by the Authority from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

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

**Data Protection Schedule:** means the Schedule (Schedule 10) attached to this Agreement describing how the Parties will comply with the Data Protection Legislation.

**Framework Agreements:** an agreement between the Agency and all the Suppliers governing the Framework, which came into existence on 14<sup>th</sup> November 2018.

**Pricing Schedule:** Set of pricing information and rates provided by the Suppliers as part of their Framework tender response.

**Support:** the support and assistance, detailed in Schedule 2, provided by the Agency to the Authority for the Framework.

**Framework:** the Agency's National Property Flood Resilience Framework (which includes each of the lots identified in Schedule 3 and is the principal arrangement for provision of residential property flood resilience measures).

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

**Suppliers:** the suppliers identified in Schedule 1 who have been awarded a place on the Framework and entered into a Framework Agreement with the Agency which contains their Confidential Information.

**Term:** as defined in clause 9.1.

- (b) Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- (c) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (d) The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.
- (e) Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- (f) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- (g) References to clauses and schedules are to the clauses and schedules of this Agreement.

## **2. OBLIGATIONS OF THE AUTHORITY AND THE PARTIES DATA PROTECTION**

- (a) The Authority shall keep the Confidential Information confidential and, except with the prior written consent of the Agency:
  - (i) not use or exploit the Confidential Information in any way except for the Framework and any Call-Off Contract; or
  - (ii) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement; or
  - (iii) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Framework and any Call-Off Contract (and any such copies, reductions to writing and records shall be the property of the Agency).

- (iv) not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
  - (v) keep separate the Confidential Information from all documents and other records of the Authority;
  - (vi) apply the same security measures and degree of care to the Confidential Information as the Authority applies to its own confidential information, which the Authority warrants as providing adequate protection from unauthorised disclosure, copying or use;
  - (vii) keep a written record of: any document or other Confidential Information received from the other in tangible form; any copy made of the Confidential Information; and
  - (viii) ensure that any document or other records containing Confidential Information shall be kept at its premises at main or head office and shall not remove or allow to be removed such document or records from its premises.
- (b) The Authority may disclose the Confidential Information to its Authorised Representative who need to know this Confidential Information for the Framework, provided that:
- (i) it informs its Authorised Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (ii) it procures that its Authorised Representatives shall, in relation to any Confidential Information disclosed to them, comply with this Agreement as if they were the Authority,
- and it shall at all times be liable for the failure of any Authorised Representative to comply with the terms of this Agreement.
- (c) The Authority shall only use the Framework for the scope of services identified within Schedule 3 of this Agreement.
- (d) The Authority acknowledges and agrees to use the Call-Off Terms when using the Framework and shall not be permitted to amend or add additional clauses to the Call-Off Terms, save where the amendment or additional clause is required by law applicable to England. The Authority shall for the purpose of the Call-Off Terms be referred to as “the *Client*” and the Agency shall provide the Call-Off Terms in an electronic format as detailed in clause 4.2
- (e) The Authority shall comply with Schedule 5 of this Agreement when using the Framework.
- (f) The Authority acknowledges and agrees to follow and comply with Schedule 6 of this Agreement when using the Framework and shall only be permitted to award direct Call-Off Contracts to the Suppliers under the terms outlined in Schedule 6.
- (g) The Authority shall comply with Schedule 7 of this Agreement when using the Framework.

- (h) The Authority shall comply with Schedule 8 of this Agreement when using the Framework.
- (i) The Authority shall comply with Schedule 9 of this Agreement when using the Framework.
- (j) The Authority shall comply with Schedule 10 of this Agreement when using the Framework.
- (k) The Authorised Representative shall on each and every yearly anniversary of the date of this Agreement provide to the Agency, in a prescribed electronic format by the Agency, the amount of money and details of the work/services spent under the Authority use of the Framework and for each Call-Off Contract within that year.

### **3. RETURN OF INFORMATION AND ANNOUNCEMENTS**

- (a) At the request of the Agency, or upon termination of this Agreement, the Authority shall promptly:
  - (i) destroy or return to the Agency all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Confidential Information;
  - (ii) erase all the Confidential Information from its computer systems ; and
  - (iii) certify in writing to the Agency that it has complied with the requirements of this clause, provided that the Authority may retain documents and materials containing, reflecting, incorporating, or based on the Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Authority to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Authority.
- (b) If the Authority develops or uses a product or a process which, in the reasonable opinion of the Agency, might have involved the use of any of the Confidential Information, the Authority shall, at the written request of the Agency, supply to the Agency information reasonably necessary to establish that the Confidential Information has not been used or disclosed in order to develop or use that product or process.
- (c) No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction.

### **4. OBLIGATIONS OF THE AGENCY**

- (a) The Agency shall provide the Confidential Information to the Authority by allowing the Authorised Representative access on the Agency IT System.

- (b) The Agency shall create a sub-folder within the Agency IT System which shall contain the Confidential Information and any other useful documentation that Agency may wish to share with the Authority.
- (c) The Agency shall, at its own discretion, provide two hours of free Support to the Authority in order to assist the Authority in the use of the Framework. If the Authority requires further Support or assistance not covered within Support (hereinafter defined as “Additional Support”), the Agency and Authority shall enter into negotiations and a further agreement covering the Additional Support.
- (d) Where an obligation on the Agency arises under this Agreement and conflicts with the Agency’s statutory duty the Parties agree that the Agency’s statutory duty will take priority.

## **5. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

- (a) The Agency reserves all rights in the Confidential Information. No rights in respect of the Confidential Information are granted to the Authority and no obligations are imposed on the Agency other than those expressly stated in this Agreement. In particular, nothing in this Agreement shall be construed or implied as obliging the Agency to disclose any specific type of information under this Agreement, whether Confidential Information or not.
- (b) Except as expressly stated in this agreement, the Agency does not make any express or implied warranty or representation concerning Confidential Information, or the accuracy or completeness of the Confidential Information.
- (c) The disclosure of Confidential Information by the Agency shall not form any offer by, or representation or warranty on the part of, the Agency to enter into any further agreement.
- (d) The Authority acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Agency shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.

## **6. FREEDOM OF INFORMATION**

- (a) The Parties acknowledge that either Party may be bound by the Freedom of Information Act 2000, the Environmental Information Regulations 2004, (both as amended and any other applicable legislation governing access to information) and may be obliged to provide information that relates to this Agreement, on request, to third parties. In the event that the Authority receives a request for information relating to this Agreement falling within the scope of such legislation, the Authority shall be entitled to disclose such information as reasonably necessary in order to ensure its compliance with the legislation provided that:

- 6.1.1 in the case of the disclosure of Confidential Information, the Authority shall first consult with the Agency as to whether such information should be disclosed under the legislation;
- 6.1.2 no Party shall be liable for any loss, damage, harm or other detriment suffered by the other Party arising from the disclosure of any information falling within the scope of Freedom of Information Act 2000, the Environmental Information Regulations 2004, or any other applicable legislation governing access to information.

## 7. INDEMNITY

The Authority shall indemnify and keep fully indemnified the Agency at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Agency arising from any breach of this agreement by the Authority and from the actions or omissions of any Authorised Representative.

## 8. LIABILITY

- (a) To the extent permitted by law, the Agency shall not be liable to the Authority for the use of the Framework and the Authority acknowledges that the Agency shall have no liability for any Call-Off Contract entered into by the Authority with Suppliers.

## 9. TERM AND TERMINATION

- (a) The Agreement shall terminate at the end of the Framework in accordance with the Framework Agreement or in accordance with clause 9.3 below.
- (b) If the Authority decides not to use the Framework prior to the release of any Confidential Information by the Agency it shall notify the Agency in writing immediately.
- (c) Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (i) the other Party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 Business Days after being notified to do so;
  - (ii) the other Party repeatedly breaches any of the terms of this 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 of this Agreement;
- (d) For the purposes of clause 9.3(a), **material breach** means a breach (including an anticipatory breach) of any obligations set out in clause 2 or that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

- (i) a substantial portion of this Agreement;

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

- (e) Termination of this Agreement shall not affect any accrued rights or remedies to which the Agency is entitled.
- (f) The obligations of confidentiality under this Agreement shall survive any such termination and continue in force from the completion of the Framework and any Call-Off Contract indefinitely. The following clauses, 2, 3, 5, 6, 7, 8, 10, 11 and 17 shall survive termination.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- (a) The Parties will not use or reproduce one another's logos or trade or business marks for any purpose without the other Party's prior consent in writing. Such written consent shall be operative as a non-transferable, non-exclusive, royalty free, terminable licence to the other Party, for the limited purposes of the Framework and this Agreement only.
- (b) The names, images and logos identifying the Agency, Supplier's, third parties (including government departments) and their information, products and services are proprietary marks of the Agency, Supplier's and/or third parties (including the government departments). Copying or use of the Agency's Logo's, Supplier's Logo's, and/or any other third party logos (including government logos) accessed via the Framework or this Agreement is not permitted without prior approval from the relevant copyright owner.
- (c) The Authority acknowledges that all drawings, documents, models, designs, and the copyright or similar protection in them which has been created for the Framework and this Agreement will belong to either the Agency or a Supplier. The Agency grants a royalty-free licence to the Authority for it to use such material (excluding any Supplier or none Agency material) in connection with the Framework but such licences will not include commercial exploitation nor the right to sub-licence, and will not be transferable. The Agency will not be liable for the consequences of any use of such material by the Authority or a third party.
- (d) The Agency makes no representations as to the accuracy, completeness or freedom from defects of the Confidential Information or Call-Off Terms or with respect to any infringement of any third party intellectual property rights.

## **11. ENTIRE AGREEMENT AND VARIATION**

- (a) This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that its only liability in respect of those representations and warranties

that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

- (c) No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties (or their authorised representatives).

## **12. NO WAIVER**

- (a) Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- (b) No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- (c) A Party that waives a right or remedy provided under this Agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## **13. ASSIGNMENT**

Except as otherwise provided in this Agreement, no Party may assign, sub-contract or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it, save that either Party may assign its rights under this Agreement to 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 that Party.

## **14. NOTICES**

- (a) Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each Party required to receive the notice [or communication] at its address as set out below:
  - (i) ENVIRONMENT AGENCY: Becca Simmins, Senior Executive Officer, Manley House, Kestrel Way, Exeter, EX2 7LQ (becca.simmins@environment-agency.gov.uk)
  - (ii) Derbyshire County Council: Richard Ward, Senior Project Engineer County Hall, Matlock, Derbyshire, DE4 3AG ("Authorised Representative")

or as otherwise specified by the relevant Party by notice in writing to each other Party.

- (b) Any notice or other communication shall be deemed to have been duly received:
  - (i) if delivered personally, when left at the address and for the contact referred to in this clause; or



- (ii) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

**15. NO PARTNERSHIP**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

**16. THIRD PARTY RIGHTS**

- (a) Except as provided in this clause 16, this Agreement is made for the benefit of the Parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- (b) The Parties may terminate, rescind or vary this Agreement without the consent of any person who is not a party to this Agreement.

**17. GOVERNING LAW, JURISDICTION AND DATA PROTECTION**

- (a) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law.
- (b) The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- (c) In the event that the Agreement requires data to be processed within the meaning of the Data Protection Legislation the Data Protection Schedule shall be completed by the Parties and provisions and definitions therein shall apply and bind the Parties as part of this Agreement.

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of

the Environment Agency

.....

Name:

Position:

Signed for and on behalf of

[ Party's Full Name ]



Name: Mike Ashworth

Position: 16<sup>th</sup> July 2020