

North Yorkshire County Council
Business and Environmental Services
Executive Members

24 June 2022

Foss Catchment Project – update and proposed acceptance of £200,000 of funding offered by the Environment Agency

Report of the Assistant Director – Growth, Planning and Trading Standards

1.0 Purpose Of Report

- 1.1 To update the Corporate Director, Business and Environmental Services (BES), and BES Executive Members on progress with the Foss Catchment Project and to seek approval for signing a three year Collaborative Agreement with the Environment Agency for North Yorkshire County Council (NYCC) to undertake project management role for next stages of the project.

2.0 Background

- 2.1 Starting in 2018/19, NYCC has undertaken project management of the Foss Catchment Project based on series of three annual Collaborative Agreements signed with the Environment Agency. To date, this has involved delivery of work totalling £47,620 – with the Yorkshire Wildlife Trust undertaking the delivery following a NYCC led procurement process in 2019.
- 2.2 This project will deliver benefits to the Water Framework Directive in mitigating the impact of sediment on ecology but also benefits for flood risk and reducing maintenance for flood defence assets. Project objectives are set out in the three-year Collaborative Agreement to be signed by the EA and NYCC (Appendix 1). The Parties wish to undertake the Project in order to provide environmental enhancement in the Foss catchment to deliver benefits to the Water Framework Directive in mitigating the impact of sediment on ecology but also benefits for flood risk and for reducing maintenance for flood defence assets. The catchment will benefit from dedicated resources to lead on awareness and education in the catchment
- 2.3 The objectives of the Foss Catchment Project are to:
1. Plan and deliver interventions which are designed to deliver multiple benefits to the Foss Catchment by promoting and delivering Catchment Scale land management improvements.
 2. Communicating the benefits of Water Framework Directive (WFD) and sediment and flood risk reduction objectives to local communities, stakeholders and wider audiences.
 3. Work with landowners to enable sustainable delivery of water quality improvements and Natural Flood Management (NFM) across the catchment.
 4. Further understand the natural capital costs and benefits (catchment resilience potential) of WFD actions in a lowland catchment, including its contribution to reducing flood risk to rural communities, improving water quality and habitat creation.

3.0 Finance

- 3.1 The Environment Agency has now confirmed £200,000 of capital funding for the main delivery phase of this partnership project and wishes NYCC to continue to undertake a project management role.
- 3.2 It is proposed that some initial work (to the value of £20,000) will be undertaken on a continuation basis by the contractor engaged for the earlier work – the Yorkshire Wildlife Trust. NYCC will then provide project management of work (to the value of £180,000) to be undertaken by a delivery organisation to be appointed after a further procurement exercise.
- 3.3 The standard NYCC external funding application form has been completed and submitted.

4.0 Equalities

- 4.1 No equalities issues have been identified associated with this project. If approval is granted to proceed, the Corporate Director, Strategic Resources will be asked to accept the funding offered by the Environment Agency.

5.0 Legal

- 5.1 The draft Collaborative Agreement (Appendix 1), as discussed with the Environment Agency, has been reviewed and cleared by NYCC legal services.

6.0 Climate Change

- 6.1 Delivery of this project will make a positive contribution to climate change resilience in the Foss catchment by supporting wildlife habitat creation and species conservation, and measures to reduce flooding impacts through nature based solutions.

7.0 Recommendation

- 7.1 It is recommended that Authorisation be granted to accept capital funding from the Environment Agency totalling £200,000 – spread over three years 22/23, 23/24 and 24/25. BES Exec Members are asked to give approval for the Corporate Director, Strategic Resources to accept the grant.

DAVID CAULFIELD
Assistant Director – Growth, Planning and Trading Standards

Author of Report: Hugh ClearHill, Principal Environmental Policy and Project Officer

Background Documents: None

Collaborative agreement – no research

Collaborative agreement – standard

Appendix 1

(1) ENVIRONMENT AGENCY

AND

North Yorkshire County Council

Collaborative Agreement relating to Foss Catchment Project

Project Ref No:

Procurement Ref No:

Commencement Date:

Project Period: 36 Months

1st draft

Document: standard collaborative agreement

INDEX**CLAUSE ITEM**

1. **The Agreement & Definitions**
2. **Duration**
3. **The Parties' obligations**
4. **Lead Partner**
5. **Working arrangements & Key Personnel**
6. **Payment & Financial Contributions**
7. **Publication & publicity**
8. **Confidentiality**
9. **Intellectual Property Rights**
10. **Liability**
11. **Property, insurance & records**
12. **Default**
13. **Termination**
14. **Dispute resolution**
15. **Notices**
16. **Statutory obligations & permissions**
17. **Environment & sustainability**
18. **Health & safety**
19. **Assignment & contracting**
20. **Force majeure**
21. **Third Parties**
22. **Conflict**
23. **Variations**
24. **Waiver**
25. **Severability**
26. **Counterparts**
27. **Governing law & jurisdiction**
28. **Survival**

Appendix 1	Specification
Appendix 2	Financial schedule
Appendix 3	Data protection

BETWEEN:

- (1) **ENVIRONMENT AGENCY**, whose principal office is at Rio House, Waterside Drive, Aztec West, Almondsbury, Bristol, BS32 4UD (“the Agency”)

AND

- (2) **NORTH YORKSHIRE COUNTY COUNCIL**, whose principal office is at County Hall, Northallerton, North Yorkshire, DL7 8AD (“the Council”)

(“the Parties”)

WHEREAS:

- A. The Parties wish to undertake the Project in order to provide environmental enhancement in the Foss catchment to deliver benefits to the Water Framework Directive in mitigating the impact of sediment on ecology but also benefits for flood risk and for reducing maintenance for flood defence assets. The catchment will benefit from dedicated resource in the form of a Project Officer to lead on awareness and education in the catchment and have agreed to collaborate in jointly funding and managing the Project.
- B. The objectives of the Project are to :
1. Plan and deliver interventions (and Natural Flood Management “NFM” where possible) at a Catchment Scale land management interventions to reduce sedimentation and improve the water quality and habitat in the Foss Catchment.
 2. Communicating the benefits of implementing Objective 1 to local communities, stakeholders and wider audiences.
 3. Further understand the natural capital costs and benefits (catchment resilience potential) of interventions in a lowland catchment, including its contribution to reducing flood risk to rural communities, improving water quality and habitat creation.
- .
- C. The aim of this Collaborative Agreement is to:
- (a) agree the financial and non-financial contributions of each Party;
 - (b) foster mutual trust and co-operation between the Parties;
 - (c) define the roles and responsibilities of the Parties;
 - (d) agree the review processes to ensure the Project objectives are being met; and
 - (e) agree the process by which any dispute will be settled.

NOW THE PARTIES AGREE AS FOLLOWS:**1. THE AGREEMENT & DEFINITIONS**

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Agreement”	means this collaborative agreement as further defined in Clause 1.4
“CEDR”	means the Centre for Effective Dispute Resolution of The International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU
“Background Rights”	means all Intellectual Property Rights owned or used by a Party, whether under licence or otherwise, which it introduces for the purpose of carrying out the Project or any activities under the terms of this Agreement
“Commencement Date”	means the date on which this Agreement commences which shall be the date at the head of this Agreement
“Completion Date”	means 31 st March 2025 or such later date as may be agreed in writing between the Parties, being the date upon which the rights and obligations of all the Parties in relation to delivering the Project under this Agreement shall be met.
“Confidential Information”	has the meaning set out in Clause 8
“Contributions”	means the Parties’ respective contributions to the Project including the Financial Contributions and the Non-Financial Contributions
“Data Protection Legislation”	has the meaning given in paragraph 2 of Appendix 3
“Deliverables”	means those Results of the Project listed in the Specification (together with any agreed addition to or variation of the same),

which are to be delivered up during the Project as set out in Clause 3.6

- “External Funding” means any funding or assistance provided by any third party (including any state or public body) for the Project or to any Party for use in the Project
- “Financial Contributions” means the financial contributions to be made by the Parties, as set out in Appendix 2
- “Force Majeure Event” means an event beyond the reasonable control of a Party that renders the performance of the Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightening or other extreme weather conditions, fire, explosion, malicious damage, industrial actions or lockouts, terrorism, war, civil commotion, military operations, riot, national emergency, the act or omission of any third party not being its agent or sub-contractor, any change in the law or in the interpretation of the law by the courts
- “Foreground Rights” means all Intellectual Property Rights in the Results
- “Intellectual Property Rights”, “IPR” means without limitation all intellectual property rights including patents, business service and trade marks and names, designs, registered designs and design rights whether or not registered or capable of registration and the right to apply for and any applications for any of the foregoing, copyrights, database rights, domain names, together with the rights in inventions, methods, processes, drawings, documents, methodologies, utility models semi-conductor chip topography, software, databases, know-how, trade or business secrets and other industrial property, and in each case whether protectable or not and, if protectable, whether an application has been made for protection or not, and all similar industrial, commercial, monopoly or other similar right

	or asset capable of protection whether present or future, vested or contingent, and wherever protected
“Interim Results”	means all Results produced or created part way through the Project and may be incomplete or partial at their time of creation
“Key Personnel”	means the key personnel as defined in Clause 5.5 for North Yorkshire County Council and listed in the Specification, as may be varied with the written approval of the other Parties
“Lead Partner”	means the Party who shall take the lead in managing and delivering the Project as set out in Clause 4
"Mediator"	means a neutral third party appointed pursuant to Clause 14.5 to assist in the resolution of disputes
“Non-Financial Contributions”	means the Parties contributions-in-kind to the Project made without charge and including but not limited to contributions of staff time, resources, facilities, accommodation and equipment together with access to such of its Background Rights as are reasonably required for the Project where the same are contributed to the Project without charge
"Parties"	means the parties to this Agreement listed
“Personal Data”	has the meaning given in paragraph 2 of Appendix 3
“Project”	means the project “River Foss Catchment Project” as set out in the Specification
“Project Activity”	means the “River Foss Catchment Project” as set out in the Specification
“Project Board”	means the body responsible for overseeing the management and supervision of the Project as set out in Clause 5

“Project Manager”	means the person who shall be responsible for the day to day management and supervision of the Project as set out in Clause 5.1
“Project Period”	means the duration of the Project as set out in Clause 2.1
“Property”	means property including but not limited to IPR used in connection with this Agreement
“Representative”	means a Party's representative as further set out in Clause 5 which shall include the Project Manager
“Results”	means all things produced, arising from and developed or created by on behalf of one or the other of the Parties in carrying out the Project or any other activities under the terms of this Agreement, including but not limited to papers, publications, maps, plans, sketches, drawings, diagrams, organograms, flowcharts, worksheets, presentations, videos, photographs, tapes, CDs, DVDs, datasets, databases, statistical data, experimental data, field data, analysis of results, published and unpublished results and reports, inventions, designs, know-how, computer hardware and software, computer code, computer programs, training manuals and other material, user documentation, progress reports and audit reports, and any other records documentation, data and information whatsoever (and in whatever media)
“Specification”	means the Project specification set out in Appendix 1
“Staff”	means employees, contractors, consultants, students and agents of a Party who are engaged or provided by the Party for the carrying out of its obligations in connection with this Agreement, and each of them
“VAT”	means Value Added Tax

means the Party or Parties carrying out the Project Activity as identified in the Specification

- 1.2 In this Agreement, unless otherwise expressly provided or unless the context otherwise requires:
- (a) reference to any statute, statutory provision or statutory instrument includes that statute, statutory provision or statutory instrument as from time to time amended, extended, consolidated or re-enacted and all statutory instruments or orders made under or pursuant to it;
 - (b) words importing a gender include all genders, words importing the singular include the plural and vice versa;
 - (c) the words "including" or "includes" or any similar phrases shall be construed without limitation to the generality of the preceding words;
 - (d) reference to any person includes a legal entity; and
 - (e) all undefined words and expressions are to be given their normal English meaning.
- 1.3 The headings in this Agreement are for ease of reference only, and shall not affect its construction and reference to any 'Clause', 'Schedule' or 'Appendix' shall be references to clauses, schedules or appendices of this Agreement unless expressly stated to the contrary.

AGREEMENT

- 1.4 This Agreement contains the whole agreement between the Parties in respect of its subject matter and supersedes all previous communications, representations and arrangements, whether written or oral. This Agreement consists of the following documents:
- (a) these terms and conditions;
 - (b) Appendix 1;
 - (c) Appendix 2;
 - (d) Appendix 3;
 - (e) any other documentation annexed hereto; and
 - (f) any variations made by the Parties in accordance with Clause 23.

In the case of ambiguity or conflict between any of the documents set out above, the documents will take precedence in the order listed (subject to clause 3.12 in respect of compliance with Data Protection Legislation).

RELATIONSHIP BETWEEN THE PARTIES

- 1.5 Nothing in this Agreement shall prejudice, conflict with or affect the exercise by the Agency of its statutory functions, powers, rights, duties, responsibilities or obligations arising or imposed

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Appendix 1

under the Environment Act 1995 or any other legislative provision enactment, bye-law or regulation whatsoever, nor shall it fetter the exercise of any discretion the Agency may have.

- 1.6 Nothing in this Agreement shall operate as a statutory licence, waiver, consent or approval from the Agency.
- 1.7 The Parties shall be independent contractors for all purposes connected with this Agreement.
- 1.8 Nothing in this Agreement shall create a partnership or joint venture between the Parties, constitute one Party as the agent of another nor deem the Staff of one Party to be those of another. No Party shall have any authority to enter into any contract, warranty or representation on behalf of another nor shall any Party incur liabilities that bind or have the effect of binding another Party and in the absence of express agreement to the contrary no Party shall be bound by the acts or conduct of another.
- 1.9 No Party or its Staff shall represent themselves as having the authority to interpret the policies and procedures of any other Party.

2. DURATION

- 2.1 This Agreement shall commence on the Commencement Date and unless earlier terminated in accordance with this Agreement shall continue until the Completion Date.

3. THE PARTIES' OBLIGATIONS

- 3.1 The Parties agree:
- (a) the programme for the administration, scope and delivery of the Project as set out in the Specification; and
 - (b) the Parties respective Contributions and their responsibilities in relation to the Project as set out in the Specification and otherwise in this Agreement.
- 3.2 The Parties shall each:
- (a) provide their Contributions and fulfil their responsibilities as set out in the Specification and otherwise in this Agreement;
 - (b) co-operate and use all reasonable endeavours to ensure the success of the Project;
 - (c) act in good faith and in the spirit of co-operation in carrying out the Project;
 - (d) ensure that all communications are constructive, comprehensive, timely and open;
 - (e) provide information promptly to one another relating to their involvement in the Project including all Results and interim Results;

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Appendix 1

- (f) promptly raise and use reasonable endeavours to resolve any issues, difficulties, problems or opportunities that arise; and
 - (g) aim to reach agreement in discussions for the good of the Project rather than for individual Party gain.

- 3.3 In carrying out its obligations under this Agreement the Parties shall each:
 - (a) use all reasonable care, attention and diligence; and
 - (b) perform their obligations in accordance with this Agreement and in a timely manner.

- 3.4 The Parties shall each inform the Project Board promptly of any event that is likely to prejudice or delay the performance or completion of the Project, or of any situation or event that may hinder or prevent that Party from providing its Contributions or any of them. The provision of information under this Clause shall not release or excuse that Party from any of its obligations under this Agreement, except and only insofar as Clause 20 (Force Majeure) may apply.

- 3.5 No Party shall do anything that may damage or prejudice the reputation of another Party or their business or other interests.

- 3.6 The Working Party agrees to carry out the Project Activity during the Project Period and shall:
 - (a) procure the services of its Staff in carrying out the Project
 - (b) provide the Deliverables at the times stated in the Specification or as subsequently varied in writing by the Parties;
 - (c) provide its share of the Results;
 - (d) provide its share of the Contributions; and
 - (e) comply with its obligations hereunder.

- 3.7 The Council agrees to use best endeavours in carrying out the Project Activity and its obligations under this Agreement.

- 3.8 The Council shall only employ in the execution and superintendence of the Project and this Agreement, persons who are suitable, and appropriately skilled and experienced in the type of work which they are to perform, and with proper guidance and supervision as required to ensure the work is carried out with due care, skill and diligence.

- 3.9 The Council shall procure that its Staff and each of them:
 - (a) is sufficiently qualified, trained, skilled and experienced in the type of work which they are to perform;

- (b) exercises all due skill, care, attention and diligence in their work;
 - (c) carries out the Project Activity in accordance with the agreed timescales in the Specification or otherwise or, where none have been agreed, within a reasonable time;
 - (d) carries out all reasonable lawful instructions, suggestions or directions given by the other Parties Representatives, subject where appropriate to the consultation with and agreement of the Project Board;
 - (e) keeps proper records of his work to evidence the creation of Foreground Rights and Results and what Background Rights, if any, were used in their creation ; and
 - (f) promptly discloses to the other Parties all Results and Foreground Rights he has created;
 - (g) liaises closely with the other Parties in every aspect of his work;
 - (h) promptly informs the other Parties via their Representatives of any difficulties, problems or opportunities that arise in his work; and
 - (i) provides all reports at the times and in the manner specified in this Agreement or otherwise agreed between the Parties.
- 3.10 The Council shall, and shall procure that its Staff shall, promptly disclose to the other Parties all Results (including Interim Results) and Foreground Rights, and in any event shall make such disclosure by the Completion date or earlier termination in accordance with this Agreement (however effected).
- 3.11 The Council shall deliver to the Project Board a **quarterly** progress report on its activities in the Project during the previous period, which shall include progress made and difficulties encountered with the Project, including any notified under Clause 3.4, any proposed changes to the manner in which the Project is run, time spent on the Project and details of the financial spend incurred and invoices issued or received during the previous period.]
- 3.12 In the event that this Agreement requires Personal Data to be processed, or one or more of the Parties otherwise processes Personal Data pursuant to this Agreement, the provisions of Appendix 3 shall apply ('process' having the same meaning as in the Data Protection Legislation). In the event of a conflict between the terms in Appendix 3 and the other terms of this Agreement, and with respect to compliance with the Data Protection Legislation only, the terms of Appendix 3 shall take precedence.
- 4. LEAD PARTNER**
- 4.1 The Council will be the Lead Partner for the Project.

4.2 The Lead Partner shall:

- (a) manage the delivery of the Project as set out in the Specification;
- (b) provide adequate management and support staffing to administer the Project effectively;
- (c) appoint the Project Manager pursuant to Clause 5.1;
- (d) be responsible for financial management and administrative aspects of the Project; and
- (e) be responsible for financial management and administrative aspects of the Project; and ensure that all Key Personnel are available to work on the Project as set out in Clause 5.6.

5. WORKING ARRANGEMENTS & KEY PERSONNEL**5.1 Project Manager**

The Lead Partner shall appoint the Project Manager who shall:

- (a) manage the day to day operation of the Project in accordance with this Agreement;
- (b) be the Lead Partner's Representative;
- (c) act as the first point of contact at the Lead Partner for all purposes in connection with the Project;
- (d) provide effective liaison between the Lead Partner, the other Parties and the Project Board;
- (e) ensure that the Project is carried out and operated in a manner consistent with its objectives as described in the Specification;
- (f) report on Project progress to the Project Board every bi-monthly and as otherwise necessary or required;

Chair the Project Board and manage its affairs as further set out in Clause 5.4.1;

be responsible for overseeing the sub-contracting of work;

supervision of the implementation of current Health and Safety legislation in delivery of the Project.

The first Representatives of the Parties shall be the person named as such in the Specification.

Parties Representatives**5.2 Each Party shall appoint a Representative who shall:**

- (a) be responsible for management of the day to day operational delivery of the Project by that Party;
- (b) ensure that the Party they are representing carries out and manages the Project in a manner consistent with the Specification and otherwise in this Agreement;
- (c) provide effective liaison between that Party, the other Parties and Project Board; and
- (d) represent that Party on the Project Board.

The first Representatives for the Parties shall be the persons named as such in the Specification.

- 5.3.1 The Parties shall promptly notify one another of any change in the identity of their Representatives.
- 5.3.2 Each Party may appoint such deputies for their Representative as they consider appropriate, such appointments to be notified to all other Parties. A deputy to a Representative shall act in substitution for that Representative in the event that the Representative is unavailable.
- 5.3.3 A Representative's deputy shall have the same powers and authority as the Representative and any act of the deputy will be deemed to be an act of the Representative.

Project Board

- 5.4.1 The Parties will set up a Project Board to oversee the management and delivery of the Project. The role of the Project Board shall include but shall not be limited to:
- (a) monitoring the overall progress of the Project against the objectives set out in this Agreement and the Specification;
 - (b) taking a strategic overview of the Project to ensure successful implementation and timely reporting;
 - (c) considering and approving correspondence and publications in respect of the Project;
 - (d) considering and recommending to the Parties proposals for changes to:
 - (i) the timescales for delivery of the Project
 - (ii) the Contributions
 - (e) Considering and agreeing changes to the Specification or any aspect of the plan for Project delivery; and
 - (f) approval of any contractors nominated by an authorised contracting Party to carry out work under the Project;
- 5.4.2 Final decisions on any change recommended by the Project Board under Clause 5.4.1(d) must be approved in writing by the Parties in accordance with Clause 23.
- 5.4.3 The Project Manager and Representatives and any other persons from the Parties as listed in the Specification shall all be members of the Project Board.
- 5.4.4 In addition to being a member of the Project Board, the Project Manager shall chair the Project Board.

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Appendix 1

- 5.4.5 The Project Board shall meet bi-monthly and at such other times as the Parties see fit. Attendance at Project Board meetings may be in person, by telephone or by such other means as the Parties may agree.
- 5.4.6 The quorum of the Project Board for decision making shall be the Project Manager and one Representative from each other Party. Each Party shall have one vote at Project Board meetings regardless of the number of persons it may have present.
- 5.4.7 Decisions of the Project Board shall be made by majority vote, and where necessary the chair of the meeting shall have the casting vote. The Parties shall seek to agree all decisions for the benefit of the Project and not for individual Party gain.
- 5.4.8 In addition to its permanent members, the Project Board shall be entitled to invite any contractors or advisors or stakeholders to participate in its meetings but such persons shall not be entitled to vote on decisions of the meeting.
- 5.4.9 The costs of hosting the Project Board and the costs of the attendance for a Party's Representative and other members of its Staff shall be borne by the relevant Party and shall not be met from the Financial Contributions.
- 5.4.10 The Parties' Representatives will co-operate and communicate as required in order for the effective day to day management and steering of the Project in between Project Board meetings.

Key Personnel

- 5.5 The Parties agree that there will be a need to retain certain persons crucial to the successful delivery of the Project. The Parties have identified such persons ("Key Personnel") from within the Staff of The Council and the Parties have agreed a written list of Key Personnel as listed in the Specification.
- 5.6.1 The Council shall (subject to the remaining provisions of this Clause 5.6) make Key Personnel available for the whole Project Period, for the purposes of carrying out the Project. Where Key Personnel are associated with the provision of specific skills or services as identified in the Specification, such skills or services shall only be provided by the named Key Personnel.
- 5.6.2 If any of the Key Personnel ceases to be a member of Staff or becomes unable to work in or for the Project for any period longer than sixty (60) calendar days, the Council will notify the other Parties of the position and will confirm any oral notification in writing, and will indicate

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Appendix 1

as quickly as possible either the expected date upon which any absentee is likely to return or whether the absence is likely to be permanent.

5.6.3 If any of the Key Personnel :

- a) leaves or decides to leave the Council;
- b) is dismissed or suspended from the Council;
- c) for any other reason is unable to work; or

if there are any circumstances which make it difficult or impossible for the Council or any of its Staff to provide the services or any of them, then the Council shall use its reasonable endeavours to identify and appoint an individual, subject to the approval of the other Parties, who has no lesser experience and expertise in the relevant field as a replacement. If any such person requires replacement at any time and the Council fails to appoint a replacement or fails to do so within a period of ninety (90) calendar days each other Party shall be entitled to terminate this Agreement or the involvement of the defaulting Party.

5.6.4 No changes of any kind shall be made to the list of Key Personnel without the written agreement of the other Parties Representatives, whose agreement shall not be unreasonably withheld. The Council shall provide the Parties with such information as may reasonably be required in support of any proposed change to the list of Key Personnel.

6. PAYMENT & FINANCIAL CONTRIBUTIONS

6.1 In consideration of the Contributions made by the other Parties and their performance of this Agreement, each Party agrees to make its Financial Contributions as set out in Appendix 2.

6.2 The Financial Contributions are exclusive of all VAT and all other taxes and duties, and each Party shall bear the cost of all VAT from time to time levied upon its Financial Contributions.

6.3 The Council shall be responsible for holding the Financial Contributions contributed by the Parties and for the financial management of the Project. It shall put in place appropriate financial management and auditing procedures for the Project, in order to control expenditure and ensure that costs are properly incurred and can be clearly identified.

6.4.1 Payment shall be made in arrears and only on completion of satisfactory progress in the ***project and compliance with milestones and / or Deliverables as set out in the Specification***. The time for payment of the Financial Contributions is set out in Appendix 2, but no payment shall actually be due until such time as the Council has provided the paying Party with a correct, valid VAT invoice and such information as the paying Party may reasonably require to verify the invoicing Party's entitlement to payment.

- 6.4.2 Financial Contributions and other resources allocated to the Project by the Parties shall only be expended or committed in accordance with this Agreement unless otherwise agreed in writing by the Parties. In the event of Financial Contributions being expended in breach of this Clause 6.4 the Party expending those funds shall be liable to repay each other Party an amount equal to such proportion of the misapplied funds in proportion to the Parties' share of the Financial Contributions due up to that date.
- 6.5 A Party shall have the right to withhold further Financial Contribution payments should the circumstances set out in Clause 6.4.2 arise regardless of whether or not that Party serves a notice for repayment of monies under that Clause.
- 6.6 If a Party fails to make any of its Financial Contributions by the due date for payment of them after receiving a correct demand therefor, the invoicing Party may charge interest on any amount outstanding, at a rate equal to the Bank of England Base Rate from time to time in force during the period when the amount remains outstanding.
- 6.7 Each Party shall ensure that it has in place appropriate financial management and auditing procedures and all shall ensure that it complies with all tax requirements faced by it in connection with this Agreement.

7. PUBLICATION & PUBLICITY

- 7.1 All external correspondence and publicity relating to the Project must be agreed in advance by the Project Board and neither Party will make any public announcement disclosure or statement concerning the Project without such prior approval.
- 7.2 Each Party shall, in all documents submitted or published, include in a prominent position an acknowledgement of the other Parties' Contributions to the Project and any rights contained in the Results or Background Rights upon which the publication depends.
- 7.3 Nothing in this Agreement in any way limits a Party's rights to prepare independent reports on the Project for internal or statutory use, to meet its legal obligations or for internal communications applicable to the management of its Staff.

8. CONFIDENTIALITY

- 8.1 The Parties acknowledge that they are each bound by freedom of information legislation and that they are each subject to statutory obligations for disclosure and publication of certain information, and as such are unable to give any undertaking not to release information about the Project or this Agreement that conflicts with such laws.
- 8.2 Subject to Clause 8.1, Confidential information shall include all data and information whether or not owned or held by a Party that:
- (a) is identified by a Party as being confidential;
 - (b) ought reasonably to be regarded as confidential (however it is conveyed or on whatever media it is stored).
- 8.3 Confidential Information includes, but is not limited to:
- (a) information relating to the contracting and commercial or business activities, personnel, customers and suppliers of a Party or any third Party;
 - (b) methods of information, techniques, know-how acquisition, software design, financial information and statistical methods;
 - (c) all Intellectual Property Rights, know-how, and information relating to the ownership, protection and exploitation of any Intellectual Property Rights developed in connection with the Project or this Agreement; and
 - (d) all Personal Data.
- 8.4 Information shall not be or shall cease to be Confidential Information where or at the point when it is:
- (a) generally available to the public other than as a result of disclosure by a Party in breach of this Agreement;
 - (b) already known to the receiving Party free of obligations of confidentiality (as evidenced by written records) at the time of its disclosure;
 - (c) provided to the receiving Party by a third party having a right to disclose the information free of any restriction as to the use or disclosure, whether under this Agreement or otherwise;
 - (e) independently developed by the receiving Party (as evidenced by written records) other than pursuant to this Agreement;
 - (f) required by operation of law or governance obligations to be disclosed (which shall include but is not limited to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or the order of any authority competent to make such an order provided that where practicable and where required for compliance with the relevant law, statute, regulation or order the Party intending to disclose the information gives to the Party who originally provided the information

- reasonable advance notice of the intended disclosure and a reasonable opportunity to make representations regarding such disclosure; or
- (g) subject to an express written waiver by the disclosing Party and the disclosing Party has the necessary authority to give such a waiver.
- 8.5 Each Party shall not, and shall procure that its Staff shall not:
- (a) use or disclose the Confidential Information except for the purposes of this Agreement;
 - (b) use or disclose the Confidential Information so as to procure any commercial advantage over the disclosing Party;
 - (c) disclose the Confidential Information to its Staff except to the extent necessary to perform that Party's obligations in connection with this Agreement and provided that its Staff to whom Confidential Information is disclosed are subject to substantially the same obligations of confidentiality as are contained in this Agreement; and
 - (d) otherwise use or disclose to any third party any Confidential Information unless such use or disclosure is permitted by the disclosing Party.
- 8.6 The receiving Party shall inform the disclosing Party immediately if it comes to its notice that any Confidential Information has been or potentially may be improperly disclosed or misused.
- 8.7 Without affecting any other rights or remedies that the disclosing Party may have, the receiving Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of its obligations of confidentiality in connection with this Agreement and the disclosing Party shall be entitled to seek the remedies of injunction, specific performance and/or other equitable relief for any actual or threatened breach of this Agreement whether by the receiving Party or its Staff.
- 8.8 The obligations of confidentiality shall survive for 6 (six) years from the Completion Date, except where the Confidential Information is IPR in which case the obligations shall survive indefinitely.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Logos and trade marks

No Party shall itself or by a third party use or reproduce or otherwise deal with the logos distinctive marks or trade marks of another Party or cause or permit the same without the consent in writing of the Party to whom the logos, distinctive marks or trade marks belong.

9.2 Background Rights

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Appendix 1

- 9.2.1 Background Rights shall remain the property of the Party introducing them to the Project and each party agrees not to use another's Background Rights in any way that is inconsistent with the operation of this Agreement
- 9.2.2 Each Party hereby grants to the other Parties a royalty-free and charge-free (except where it is not able to do so and makes such declaration in accordance with Clause 9.2.4), world-wide, non-exclusive, non-transferable irrevocable licence for non-commercial purposes to use its Background Rights:
- (a) during the Project Period solely for the purpose of fulfilling its obligations arising from this Agreement whether by itself or by its Staff (which for the avoidance of doubt may include its contractors) in accordance with this Agreement, but otherwise without a right to sub-licence; and
 - (b) in order for the licensed Party to use any Foreground Rights insofar as is necessary for the purposes expressly permitted in this Agreement.
- Such licence shall be terminable only in cases of material breach of the provisions of the licence.
- 9.2.3 The licence set out in Clause 9.2.2 shall not permit the licensed Party to:
- (a) use the licensed Background Rights for any commercial purposes;
 - (b) sub-licence the Background Rights other than to the extent set out in Clause 9.2.2; or
 - (c) further develop the Background Rights other than to the extent necessary for the purposes of Clause 9.2.2(a).
- 9.2.4 Without prejudice to the generality of Clause 9.2.2, a Party may charge a reasonable royalty or to impose restrictions for use of such Background Rights only where that Party is itself subject to such obligations to a third party and only where the Parties have agreed in writing in advance of provision of those Background Rights a fair, reasonable and non-discriminatory fee for the use of them.
- 9.2.5 At the end of the Project Period each Party shall return all property in which Background Rights subsist to the Party introducing them to the Project. No such property or copies of it shall be retained other than where ongoing possession is required in order to use the Foreground Rights as permitted in this Agreement.
- 9.2.6 No Party shall supply Background Rights to another Party under this Agreement in the knowledge, information or belief that the use of the Background Rights by that Party will infringe the Intellectual Property Rights of any third party, and each Party;
- (a) warrants to the other Party and will warrant at the time of each such provision that to the best of its knowledge, information and belief at the time of provision none of the

- IPR, the Background Rights and Foreground Rights provided by that Party will be in breach of any third party's IPR; and
- (b) shall indemnify the other Party against any loss, liability or costs arising from third party claims in respect of any such breach whether actual or alleged.

9.3 Foreground Rights

- 9.3.1 The Agency shall own the Results and Foreground Rights and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for the Foreground Rights, including filing and prosecuting patent applications for any of the Results.
- 9.3.2 Each Party shall procure from its Staff (including any students) all Results and Foreground Rights and shall take such steps as are necessary in order to give effect to Clause 9.3.1.
- 9.3.3 The Agency hereby grants to the other Parties a royalty-free and charge-free, world-wide, non-exclusive, non-transferable irrevocable licence, without the right to sub-licence, in respect of all Foreground Rights necessary :
- (a) in order for each other Party to use the Results to fulfil its obligations arising from this Agreement in connection with the Project during the Project Period; and
- (b) in order for the licensed Party to use the Foreground Rights for its own internal business, research, teaching and/or statutory or regulatory purposes.
- 9.3.4 In each case set out in Clause 9.3.3 the licence shall permit use only insofar as is necessary for the use of such Foreground Rights for those purposes and without limiting the generality of the foregoing those purposes:
- (a) shall not include any commercial use or purpose;
- (b) shall not permit further development of the Foreground Rights; and
- (c) may involve a third party contractor carrying out work on its behalf, provided always that any licence of the Foreground Rights granted to third parties for those purposes shall be on terms that prohibit sub-licensing, transfer, assignment and commercial use or exploitation and other appropriate terms. The rights in this sub-clause are subject to the rules on publication in Clause 7.
- 9.3.5 Except in the case of sub-licence to a contractor carrying out work for a Party in accordance with Clause 9.3.3, the licensed Parties shall not sub-license any Foreground Rights or allow any third party to use such rights without the prior written consent(s) of the Agency, which if granted shall be subject to fair, reasonable and non-discriminatory terms.

- 9.3.6 Any use or sub-licensing of the Foreground Rights of another Party for commercial purposes shall be subject to the separate agreement of the Parties which if agreed shall be on fair, reasonable and non-discriminatory terms and subject to reasonable revenue sharing arrangements.
- 9.3.1 The owning Parties hereby grant to each other Party a royalty-free and charge-free, world-wide, non-exclusive, non-transferable irrevocable licence, without the right to sub-licence, in respect of all Foreground Rights necessary:
- (a) in order for each other Party to use the Results to fulfil its obligations arising from this Agreement in connection with the Project during the Project Period; and
 - (b) in order for the licensed Party to use the Foreground Rights for its own internal business, research, teaching and/or statutory or regulatory purposes.
- 9.3.1 In each case set out in Clause 9.3.4 the licence shall permit use only insofar as is necessary for the use of such Foreground Rights for those purposes and those purposes:
- (a) shall not include any commercial use or purpose;
 - (b) shall not permit further development of the Foreground Rights; and
 - (c) may involve a third party contractor carrying out work on its behalf, provided always that any licence of the Foreground Rights granted to third parties for those purposes shall be on terms that prohibit sub-licensing, transfer, assignment and commercial use or exploitation and other appropriate terms. The rights in this sub-clause are subject to the rules on publication in Clause 7.
- 9.3.2 Except in the case of sub-licence to a contractor carrying out work for a Party in accordance with Clause 9.3.5, the licensed Parties shall not sub-licence any Foreground Rights or allow any third party to use such rights without the prior written consent(s) of the owning Parties for those Foreground Rights which if granted shall be subject to fair, reasonable and non-discriminatory terms.
- 9.3.3 Any use or sub-licensing of the Foreground Rights of another Party for commercial purposes shall be subject to the separate agreement of the relevant Parties which if agreed shall be on fair, reasonable and non-discriminatory terms and subject to reasonable revenue sharing arrangements.
- 9.4 If a Party is prevented from carrying out its obligations under this Agreement due to any infringement or alleged infringement of any Intellectual Property Rights, that Party may

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Appendix 1

without prejudice to any other rights and remedies exercise the powers and remedies available to it under Clauses 12 and 13 (Default and Termination).

9.5 No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly granted in this Agreement. Nothing in this Clause 9 is to be taken as a consent, authorisation or instruction for the purposes of clause 3.12 or Appendix 3 (Data Protection).

10. LIABILITY

10.1.1 Subject always to the provisions of Clause 10.3, each Party shall indemnify each other Party, and its Staff against:

- (a) all claims, demands, actions, costs, expenses, losses and damage made or notified to the indemnified Party and arising from or incurred by reason of the indemnifying Party or its Staff in carrying out work under this Agreement or any infringement of IPR in connection therewith; and
- (b) the acts, errors or omissions of its Staff that are a result of or due to the negligence of the indemnifying Party.

10.1.2 Each Party shall be liable for, and shall promptly discharge, payment of all salaries, expenses, costs, disbursements, income or other taxes, pensions, national insurance contributions and dues of any kind arising out of the employment or other engagement of the Staff and any other person carrying out work on behalf of a Party under this Agreement and subject always to the terms of Clause 10.3 each Party shall indemnify each other Party against all claims made and arising out of the payment, or non-payment, of any such items by the indemnifying Party.

10.1.3 Subject always to the terms of Clause 10.3, each Party shall indemnify each other Party against all claims, demands, actions, costs, expenses, losses and damage arising from or incurred by reason of any breach by it of Clause 3.12 or any provision of Appendix 3 (Data Protection) or any infringement by it or its Staff of the Data Protection Legislation in connection with its performance under this Agreement.

10.1.4 The Council shall be responsible for and shall indemnify and hold harmless the Agency against third party costs claims damages and liabilities which may arise out a result of any advice given as part of the Project, or as a result of any works carried out as part of the Project for the lifetime of the Project and beyond.

- 10.2 No Party seeks to exclude or limit its liability for death or personal injury caused by its negligence, or fraudulent misrepresentation made by it or on its behalf, or such other matters where exclusion of liability is constrained or prohibited by operation of law.
- 10.3 Except as otherwise expressed in this Agreement, no Party shall be liable to another for:
- (a) loss of actual or anticipated profits or any economic loss, loss of revenue or loss of contract, whether direct or indirect; or
 - (b) indirect, special or consequential loss or damage arising out of or in connection with this Agreement, whether for breach of contract, negligence or otherwise.

11. PROPERTY, INSURANCE & RECORDS

- 11.1.1 The Parties shall each insure and maintain such insurances with a reputable insurer based in the UK as are necessary to cover its liability in respect of personal injury or death arising out of, or in the course of, its work under this Agreement.
- 11.1.2 Each Party shall insure with a reputable insurer based in the UK against any expense, liability, loss, claim or proceedings whatsoever in respect of any damage to any real or personal property to an amount of £5 million (five million pounds) for any one occurrence or series of occurrences arising out of any one event and due in whole or in part to the acts, errors or omissions of any person for whom that Party is responsible.
- 11.1.3 Each Party shall insure against professional indemnity liabilities with a reputable insurer which is based in the UK to an amount of £5 million (five million pounds) for any one occurrence or series of occurrences arising out of any one event and due in whole or in part to the acts, error or omissions of any person for whom that Party is responsible.
- 11.2 The Parties shall maintain such insurances for a period of 7 (seven) years after the end of the Project Period.
- 11.3 The requirements of Clause 11.1 may be waived for a Party where that Party can establish that it has in place self-insurance or other arrangements to provide cover for its liabilities and the nature of such arrangements are reasonably acceptable to the other Parties.
- 11.4 Each Party shall maintain all records and associated documentation required for the proper implementation and operation of the Project and used in connection with the Project and this

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Appendix 1

Agreement for a period of 7 (seven) years following the Completion Date. This shall include full and accurate accounts and records together with supporting documentation of:

- (a) all expenses and expenditure incurred by it in connection with the Project and this Agreement;
 - (b) all Contributions actually made by it; and
 - (c) all Results and Foreground Rights produced by it.
- 11.5 Each Party shall on request provide the other Parties (including their auditors, agents and advisers) with such access to those records as may reasonably be required.
- 11.6 All Property provided by a Party to another Party shall remain the property of the providing Party and shall only be used for the purposes for which it was provided in carrying out the Project. The receiving Party shall keep all such Property in safe custody and good condition, shall ensure it is separately identified or identifiable and save where the Party providing the Property expressly agrees to the contrary shall ensure that the Property is fully returned to the providing Party.
- 11.7 Where any Property has been purchased during the Project using the Parties Contributions, on termination of this Agreement:
- (a) the Parties shall allocate ownership of such Property as they may agree; and
 - (b) The residual value of Property allocated under Clause 11.7(a) shall be agreed by the Project Board, and allocated between the Parties in proportion to their respective shares of the total Financial Contributions. Within 3 (three) calendar months of termination of this Agreement the Party taking ownership of such Property shall pay to the other Parties such residual value as agreed. Any items which no Party wishes to retain shall be sold, and the proceeds shared between the Parties in proportion to their respective shares of the total Financial Contributions.

12. DEFAULT

- 12.1 A Party shall be in default if it:
- (a) fails to perform its obligations hereunder with reasonable skill, care, diligence and timeliness; or
 - (b) is otherwise in breach of any provision of this Agreement.
- 12.2 It shall be a material breach of contract if a Party:
- (a) fails to fully perform and comply with its obligations under this Agreement; or

- (b) fails to use reasonable skill, care, diligence and timeliness in performing and complying with its obligations under this Agreement;
 - (c) fails to provide any Contributions or Deliverable at the times specified or agreed for delivery;
 - (d) misuses another Party's Contributions;
 - (e) breaches any third party's Intellectual Property Rights;
 - (f) deals with any Party's Intellectual Property Rights in a manner that is inconsistent with the provisions in this Agreement;
 - (g) is prevented from carrying out its obligations under this Agreement due to any infringement or alleged infringement by it of any Intellectual Property Rights;
 - (h) materially breaches any of the requirements of Clause 3.12 or Appendix 3 (Data Protection), Clause 16.1 (statutory obligations) or Clause 18.3 (Construction (Design and Management) Regulations 2015);
 - [(i) knowingly or persistently breaches Clause 5.5 to 5.8 (Key Personnel) or fails to replace any Key Personnel as required by Clause 5.6
 - [(j) breaches the conditions of its External Funding where such breach has an adverse impact on the availability of such funding to the Project, on the operation of the Project or on any other Party; or
 - (k) commits a series of defaults under Clause 12.1 of this Agreement which when taken together constitute a material breach.
- 12.3 The short temporary non-availability of Staff for reasons outside a Party's reasonable control or the occurrence of a Force Majeure Event shall not constitute events that give rise to a material breach of contract.
- 12.4 Where, in the reasonable opinion of a Party, another Party is in material breach of contract, the non-defaulting Party shall where reasonably practical first consult the Project Board regarding the appropriate course of action, and thereafter shall be entitled to serve a written notice upon the defaulting Party notifying that defaulting Party:
- (a) of the material breach of contract;
 - (b) whether the breach is capable of remedy or not and, if capable of remedy, requiring the defaulting Party to remedy the default; and
 - (c) provided that the breach is not due to the fault of the Party serving the notice, that the non-defaulting Party may terminate the Agreement if the defaulting Party does not take reasonable steps to remedy the specified breach within such reasonable period as the non-breaching Party may specify provided that the period is not less than 30 (thirty) calendar days.

12.5 If in the opinion of the Agency, the Council does not complete its obligations under this Agreement on time or with the specified degree of care and skill then the Agency shall be entitled to:

- (a) require the Council to rectify the situation at its own cost; or
- (b) arrange completion of the work at its own expense, such costs to be reimbursed by the defaulting Party.

13. TERMINATION

13.1 The Parties may terminate this Agreement by mutual consent at any time during the Project Period on such terms as the Parties may agree.

13.2 The Agency shall have a right to terminate its participation in this Agreement with immediate effect or if it so elects upon notice in the event that it considers in its sole discretion that to continue all or part of this Agreement does or will conflict with the Agency's functions, powers, duties aims or objective or is otherwise inconsistent with its obligations as a public body.

13.3 A Party shall be entitled to terminate this Agreement (or the participation of another Party in this Agreement) with immediate effect, without prejudice to any other rights and remedies under this Agreement, where another Party:

- (a) has served upon it a notice pursuant to Clause 12.4 specifying an irremediable breach, except where the breach is due to the default of the Party serving the notice;
- (b) has served upon it a notice pursuant to Clause 12.4 specifying a remediable breach and the defaulting Party has failed to remedy that breach or failed to take steps to remedy that breach which are reasonably satisfactory to the terminating Party within the time stated in the notice, except where the breach is due to the default of the Party serving the notice;
- (c) assigns or transfers any part of its benefits under this Agreement to a third party, save for the purposes of reorganisation or transfer to a successor body, without the prior written consent of all Parties; or

13.4 Where there are more than two Parties to the Agreement and the participation of a Party has been terminated for whatever reason, the non-defaulting or non-departing Parties may:

- (a) agree to terminate the Agreement entirely; or
- (b) agree that the Project may continue, and amend this Agreement as they agree appropriate; and
- (c) where and to the extent that the terms of this Clause 13.4 apply, this Agreement shall be deemed to survive the termination of the departing or defaulting Party's

participation and all references in this Agreement to its termination shall in such circumstances be construed as reference to termination of the departing or defaulting Party's participation in the Agreement.

- 13.5 Upon termination of this Agreement (or upon termination of a Party's participation in it) then the Parties (or the departing Party in the latter case) shall:
- (a) pay over to the Lead Partner such portions of their respective Financial Contributions that is unpaid at the date of termination (whether or not the date for final payment has been reached) as may be necessary to cover their proportion of the reasonable costs and commitments reasonably and necessarily incurred in connection with the Project and not paid at that date;
 - (b) immediately return to each other Party all of its Property including all equipment, Background Rights, documentation and information (in the case of Personal Data, in accordance with Appendix 3);
 - (c) account to the other Parties in respect of any of the other Parties' Financial Contributions it holds provided that such Financial Contributions are not required to discharge reasonable costs and commitments necessarily incurred in connection with the Project but not paid at that date;
 - (d) repay any amount it is due to pay pursuant to Clause 6.4; and
 - (d) hand over to the other Parties copies of all Results held by it, including Interim Results.
- 13.6 Without prejudice to the generality of Clause 9 (Intellectual Property), each Party (excepting a Party in material breach of the Agreement) shall retain all rights granted to it under this Agreement to use Foreground Rights for the purposes permitted in Clause 9.
- 13.7 Termination of this Agreement (or the participation in it of a Party) shall not prejudice any rights of any Party which have arisen on or before the date of termination.
- 13.8 Without prejudice to the generality of this Agreement, where the terms of Clause 20 apply, the occurrence of a Force Majeure Event, whilst not a material breach of contract, may give rise to termination of this Agreement or a Party's participation in it where the circumstances envisaged by Clauses 20.3 or 20.4 apply.
- 13.9 Without prejudice to the generality of Clause 13.5 any outstanding reasonable costs and commitments reasonably and necessarily incurred in connection with the Project and not paid at the date of termination will be allocated between the Parties in proportion to their Contributions to the Project,

14. DISPUTE RESOLUTION

- 14.1 During the Project Period the Parties shall attempt to resolve all disputes and differences between themselves and if they are unable to do so such matters, it shall first be referred to the Project Board.
- 14.2 If the Project Board is unable to resolve the dispute or difference to the satisfaction of the Parties in dispute within two weeks, the Parties in dispute shall attempt to resolve the issue by negotiation between their Representatives or such other persons as those Parties may reasonably designate for resolving disputes. If the dispute or difference is not so resolved within a reasonable period, the Representatives shall refer the matter to their respective senior managers for resolution.
- 14.3 If any dispute arises after the Project Period, the Parties in dispute shall attempt to resolve it via their Representatives or such other persons as those Parties may reasonably designate for resolving disputes in such circumstances. If the Representatives or other persons are unable to resolve the dispute within a reasonable period, the matter shall be referred to their respective senior managers for resolution.
- 14.4 If the matter referred to the Parties' senior managers pursuant to Clause 14.2 or 14.3 cannot be resolved, the Parties in dispute shall consider referring the matter to mediation in accordance with Clause 14.5. If those Parties acting in good faith do not consider that mediation is an appropriate method of dispute resolution they shall consider such other methods of alternative dispute resolution as they reasonably consider to be appropriate in the circumstances and shall seek to resolve the matter using such methods as they may agree.
- 14.5 In the event that the Parties in dispute decide that mediation is appropriate, they will use the following procedure:
- (a) The Mediator shall be chosen by agreement between the Parties, provided that any Party may within 14 (fourteen) calendar days from the date of the proposal to appoint a mediator, or within 14(fourteen) calendar days of notice to any Party that the chosen mediator is unable or unwilling to act, apply to CEDR to appoint a mediator;
 - (b) The Parties to the dispute shall within 14 (fourteen) calendar days of the appointment of the Mediator agree a timetable for the mediation. If appropriate, the relevant Parties may at any stage seek guidance from CEDR on a suitable procedure;
 - (c) Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings;

- (d) Where the Parties agree that mediation is appropriate, the dispute resolution procedure in this Clause 14 shall be binding on the Parties but the Parties shall not be bound by the outcome of the mediation unless and until the Parties agree to be so bound and set out the agreed resolution in a written agreement;
- (e) Failing agreement, any Party to the dispute may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant Parties. The Party requesting the opinion shall bear the costs incurred in obtaining that opinion unless the Parties agree otherwise;
- (f) For a period of 60 (sixty) calendar days from the date of the appointment of the Mediator, or such other period as the Parties to the dispute may agree, none of those Parties may commence any proceedings in relation to the matters referred to the Mediator save that those Parties shall be free to apply to the courts for interlocutory relief at any time.
- 14.6 For the avoidance of doubt, recourse to the means of alternative dispute resolution provided for in this Clause 14 shall not preclude the exercise of the rights under Clauses 12 (Default) and 13 (Termination) including the service of notices and termination provisions.
- 15. NOTICES**
- 15.1 All notices given under this Agreement shall be in writing and will be sent to the address of the Party being served as set out in the Specification or any other address a Party may from time to time designate by notice given in accordance with this Clause 15.
- 15.2 Notices may be delivered personally, by first class pre-paid letter or fax transmission.
- 15.3 Any notice served in accordance with Clauses 15.1 and 15.2 above will be deemed to have been served:
- (a) at the time of delivery when served in person;
 - (b) 2 (two) working days from the date of posting when served by first class post; or
 - (c) immediately on transmission when served by fax, provided that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next working day after transmission.
- 15.4 In proving service it shall be sufficient to show that:
- (a) when delivery is in person the notice was delivered to the appropriate address;
 - (b) when service is by post the notice was submitted to an appropriate carrier for delivery, was properly addressed and all postage was fully paid; or

- (c) where service is by fax transmission, an automatic delivery report produced at the time of transmission demonstrating that the telephone number of the facsimile machine to which the message was sent was the number designated for service.

16. STATUTORY OBLIGATIONS & PERMISSIONS

- 16.1 The Parties shall each at their own expense comply, and procure that their Staff comply, with all laws and regulations applicable to the Project and their involvement in it including all health and safety legislation, Data Protection Legislation, the Race Relations Amendment Act 2000, Prevention of Corruption Acts 1889-1916, and the Freedom of Information Act 2000.
- 16.2 Each Party shall be responsible for securing and maintaining such permissions, licences, consents or approvals as it needs in connection with the Project.

17. ENVIRONMENT & SUSTAINABILITY

- 17.1 The Parties shall ensure that sustainable development, which includes environmental, social and economic factors, is taken into account during all stages of the Project and this Agreement and in any relevant contracts entered into with third parties.
- 17.2 Unless there is a specific requirement otherwise the Parties require that all reports in connection with this Agreement will be made in electronic format. Where paper copies of reports or other hard copy communications are required and where there are written announcements or publications required they will be printed on minimum 80% post-consumer waste recycled paper and where possible will be printed double-sided.

18. HEALTH & SAFETY

- 18.1 Where Staff of one Party are working on the premises or under the direction of another Party, that Party shall make those Staff aware of its health and safety and security requirements and those Staff shall comply with all instructions and requirements of that other Party relating thereto. While working remotely, the Staff of any Party shall be subject to that Party's health and safety policies on remote and home working.
- 18.2 Each Party reserves the right to refuse access to their premises to any person at any time or to require such person to leave its premises, without being required to give any reason for its decision and without incurring any liability for any loss that may be suffered as a result of that refusal. Such reasons may include where it has reasonable grounds to believe that person is a risk to the health and safety of others on those premises.

18.3 The following provisions apply where any construction project is carried out under this Agreement ('the project'):

- a) The Council shall be treated for the purposes of the CDM Regulations as the only client in relation to the project;
- b) The Council shall perform its client duties in accordance with the CDM Regulations;
- c) The Council shall ensure that it has available to it from the Commencement Date the resources and expertise necessary to perform its client duties;
- d) in performing its client duties, The Council shall have regard to the Health and Safety Executive's guidance document L153 *Managing Health and Safety in Construction* (including any amendment or replacement from time to time);
- e) this clause 18.3 does not affect the application to any Party other than The Council of the duties specified in regulation 4(8)(c) of the CDM Regulations (pre-construction information and ongoing co-operation); and
- f) in this clause 18.3:

'the CDM Regulations' means the Construction (Design and Management) Regulations 2015;

'client' has the same meaning as in the CDM Regulations;

'client duties' means duties under the CDM Regulations as client for the project including in respect of the appointment of a principal designer and principal contractor under regulation 8(3);

'construction project' has the meaning given to 'project' in the CDM Regulations.

19. ASSIGNMENT & SUB-CONTRACTING

19.1 No Party shall be entitled to sub-contract, assign or otherwise transfer the whole or any part of its obligations under this Agreement (except in the case of assignment or transfer where for the purposes of solvent reorganisation or transfer to a successor body or by operation of law) without the prior written consent of all Parties. As the nature of the relationship between the Parties is to be a close collaborative relationship, it shall be reasonable in any case to refuse to consent to assignment or transfer.

19.2 No assignment, transfer or sub-contracting by a Party shall relieve it of any of its obligations or duties under this Agreement and that Party shall remain fully liable as though the matter assigned, transferred or sub-contracted matters were carried out by itself.

- 19.3 The terms of any sub-contract entered into by a Party in connection with this Agreement shall be consistent with and shall ensure compliance with this Agreement, including all auditing and financial requirements.
- 19.4 Any Party sub-contracting work under this Agreement shall ensure that it and any third party contractor to whom that work is sub-contracted has appropriate financial and auditing procedures in place to manage its commitments to the Project and that Party shall ensure that both it and its sub-contractor have complied with all relevant tax requirements relevant to the Agreement and their involvement with it.
- 19.5 The Council will be the contracting party in respect of any contracts entered into with third parties, including any persons employed for the purpose of delivering the Project (and who are not otherwise existing members of a Party's Staff, or where otherwise expressly agreed) and the Council shall be responsible for all concomitant liabilities to such persons in respect of, amongst other things, health and safety, training, pay and conditions, pension and redundancy, except where such liabilities arise due to the cause of another Party. For the avoidance of doubt nothing in this Clause shall serve to alter a Party's liability in respect of its Staff.

20. FORCE MAJEURE

- 20.1 If the performance by any Party of any of its obligations under this Agreement is prevented or delayed by a Force Majeure Event then that Party shall be excused from performance of that obligation for the duration of the Force Majeure Event.
- 20.2 If a Party becomes aware of a Force Majeure Event that is or is likely to give rise to a failure or delay on its part, then that Party shall notify the Project Board members as soon as reasonably practicable giving a description of the Force Majeure Event and, where possible, an estimate of its likely duration.
- 20.3 If the Force Majeure Event in question continues or is likely to continue for a continuous period in excess of 30 (thirty) calendar days the Parties shall enter into discussions with regard to alternative arrangements in respect of this Agreement which may include but are not limited to termination of it pursuant to Clause 13.
- 20.4 Where a Force Majeure Event has extended or is reasonably anticipated to extend for a period of more than 60 (sixty) calendar days or for periods in aggregate of more than 60 (sixty) calendar days in any 12 (twelve) month period then this Agreement or the continued

participation in it of the Party subject to the Force Majeure Event may be terminated by any other Party with immediate effect.

21. THIRD PARTIES

21.1 Save where this Agreement expressly provides to the contrary, for the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. This does not affect any right or remedy of any such party which exists or is available apart from that Act.

21.2 The members of the Project Board must be made aware of any third parties involved in the Project and must approve both any contractor selected and any award of contract to them, and payment of invoices to them, in each case such approval shall not be unreasonably withheld or delayed.

22. CONFLICT

22.1 The Parties shall not (whether directly or indirectly) and shall not allow, permit or instruct their Staff to undertake work which would cause a conflict with the work that Party is undertaking under this Agreement where such conflict would have a direct and adverse impact on the Party's ability to comply with its obligations under this Agreement or would otherwise impede or interfere with the Party's proper performance of this Agreement.

22.2 A Party shall forthwith notify the Project Board of actual or potential conflict of interest of which it becomes aware.

23. VARIATIONS

23.1 No change or variation to this Agreement will be effective unless and until it is agreed in writing, signed by all Parties and annexed to this Agreement.

24. WAIVER

24.1 No failure or delay or grant of indulgence by a Party to exercise or enforce any right, power or remedy available to it, will operate or be construed as a waiver of such right, power or remedy under this Agreement or otherwise, nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.

25. SEVERABILITY

25.1 If any court or other competent authority finds that any part or provision of this Agreement is void, unlawful or unenforceable then that part or provision will be deemed to have been

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Appendix 1

severed from this Agreement and shall have no force and effect. The remaining provisions of this Agreement will continue to be valid and enforceable to the fullest extent permitted by law, and the Parties shall negotiate in good faith to agree the terms of a mutually acceptable and satisfactory alternative part or provision in that, as amended, it is valid and lawful and enforceable.

26. COUNTERPARTS

26.1 This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same agreement.

27. GOVERNING LAW & JURISDICTION

27.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the agreed provisions in respect of alternative dispute resolution the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales regarding any claim or matter arising under this Agreement.

28. SURVIVAL

28.1 The provisions of Clauses 1 (Definitions), 6.4, (Payment & Financial Contributions), 7 (Publication & Publicity), 8 (Confidentiality), 9 (Intellectual Property Rights), 10 (Liability), 11 (Property, Insurance & Records), 13.5, 13.6, 13.7 and 13.9 (Termination), 14 (Dispute Resolution), 19 (Assignment & Contracting), 21 (Third Parties), 24 (Waiver), 25 (Severability), 26 (Counterparts), 27 (Governing Law & Jurisdiction), and 28 (Survival) shall survive termination of this Agreement.

AS WITNESS the hands of authorised signatories for the Parties hereby agree.

SIGNED for and on behalf of the
ENVIRONMENT AGENCY

SIGNED for and on behalf of **NORTH
YORKSHIRE COUNTY COUNCIL**

Name:

Name:

Position:

Position:

Appendix 1**Project specification - collaboration
ENV0003008C****1. Project summary**

The parties wish to undertake the Project in order to provide environmental enhancement in the Foss Catchment to deliver benefits to the Water Framework Directive (WFD) in mitigating the impact of sediment on ecology but also benefits for flood risk and for reducing maintenance for flood defence assets. The catchment will benefit from dedicated resource to facilitate education for land managers and raise awareness on how changes to land management practices could improve the riparian and fluvial habitats and the partners have agreed to collaborate in jointly managing the Project.

2. Project partners

Environment Agency and North Yorkshire County Council

3. Overall strategic objective

This is regarded as a flagship project for this management catchment both for our Catchment Partnership and for the North Yorkshire and York Local Nature Partnership to demonstrate partnerships working to deliver an integrated, multi benefit project, across political boundaries. By taking a catchment based approach this project will help us take a whole catchment view of the issues and remedies, in line with DEFRA's aspirations and those of our Partners.

In recent years DEFRA has committed to investing substantial sums of money into reducing flood risk in the City of York including the risk posed by the Foss Catchment. Due to the nature of land management practices in the wider catchment of the Foss, large volumes of sediment are currently deposited in the City of York. Whilst this project aims to reduce that volume in order to mitigate its impact on ecology, a wider benefit of reduced maintenance requirements for flood defence assets will also be achieved. It is also anticipated that this Project would have significant benefits for the urban areas of York by reducing the amount of sediment in the watercourses that pass through them.

Fields are heavily compacted. As a result, precipitation drains overland carrying sediment which settles out clogging road gullies, increasing the risk of surface water flooding. Soil erosion on the UK results in the annual loss of around 2.2m tonnes of topsoil. This costs farmers across the country £9m a year in lost production. (Defra 2009)

Phase 1 and two of this project were successfully completed in 2019/20 and 2020/21 respectively. Phase 1 of the project acted as a trial to access whether the Partners could work together to deliver improvements to the catchment whilst Phase 2 moved the project into the delivery of sediment reduction interventions in the form of: tree planting; river bank re-profiling; increases in field buffer strip sizes; fencing and livestock drinking troughs. Stakeholder engagement will continue to take place however, the main focus will be delivery of interventions. A large number of sites walkovers took place on land where potential interventions could be installed and engagement activities took place to promote good land management practice. Phase 3, which is covered by this agreement, brings together all of the work carried out in the first two phases and looks to deliver interventions across the catchment and realise the benefits discussed above.

4. Specific objectives

5. Plan and deliver interventions which are designed to deliver multiple benefits to the Foss Catchment by promoting and delivering Catchment Scale land management improvements.
6. Communicating the benefits of WFD and sediment and flood risk reduction objectives to local communities, stakeholders and wider audiences.
7. Work with landowners to enable sustainable delivery of water quality improvements and NFM across the catchment.
8. Further understand the natural capital costs and benefits (catchment resilience potential) of WFD actions in a lowland catchment, including its contribution to reducing flood risk to rural communities, improving water quality and habitat creation.

5. Programme of work and parties' responsibilities

5.1 Parties' responsibilities

Environment Agency

- Provide representatives for the project board
- Provide specialist advice relating to land management and agriculture to NYCC as required.
- Provide funding as outlined in the funding profile
- Provide a link to the Dales to Vales River Network through the Catchment Co-ordinator.

North Yorkshire County Council

- Appoint and employ a third party Project Officer
- Carry out engagement activities with land owners in the Foss Catchment
- Provide two members of staff (plus the project officer) to sit on the Project Board

5.2 Programme of work

5.2.1 Phase One – continuation contract with Yorkshire Wildlife Trust – 1 April 2022 – 30 Sept 2022

1 April – 30 Sept 2022	
Tasks	<ul style="list-style-type: none"> • Re-engage with IDB and steering group • Re-engage with community and reignite project through <ul style="list-style-type: none"> ○ NFU/DVRN/Foss Society newsletters ○ Social media ○ local press/community bulletin boards etc. ○ Mail-out to catchment • Update relevant websites • Identify unknown land owners (via land registry) • Contact identified landowners to establish interest in delivering the work • Meet landowners and contractors to cost up first round of interventions • Create a costed initial programme of works to commence in 2022/3

5.2.2 Phase Two (following procurement and appointment of Project Contractor for deliver period from 1 September 2022 – 31 March 2025. (Overlap with Phase One to ensure hand-over / continuity)

5.2.2.1 **Task 1** – Seek Consent for works beyond those carried out in Phase One where necessary

- Seek and obtain consent (formally or informally) from the relevant authority, landowner or stakeholder.

5.2.2.2 **Task 2** – Engage landowners and stakeholders to develop site specific plans for potential interventions

- Continue to work and engage with landowners and the Internal Drainage Board to promote sustainable agricultural and watercourse management techniques.

5.2.2.3 **Task 3** – Deliver interventions on land from the site plans produced in Task 2. These could include:

- Undertake tree planting to increase soil stability and reduce run-off.
- Increase buffer strips to reduce loss of agricultural nutrients through seeding.
- Undertake bank re-profiling to reduce bank erosion.
- Where possible install alternative livestock drinking points and additional fencing to reduce, poaching and sediment loss.
- Targeted approach to removal of Invasive Non-Native Species – e.g. Mink and Himalayan Balsam.

6 Deliverables

Phase	Task No.	Deliverable	Responsible party	Date of completion, end: (for example, date or by week 2)
One		Costed initial programme to commence in 2022/23	The Council	30 Sept 2022
Two	1a	Seek consent for works in Phase One	The Council	December 2022
	1b	Seek consent for works in Phase Two	The Council	June 2023
	2	Engage landowners and stakeholders to develop site specific plans for potential interventions.	The Council	June 2023
	3	Deliver interventions on	The Council	March 2025

		land from the site plans produced in Task 2		
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7. Target audience

In order to deliver this project we are aiming to engage with the Foss Internal Drainage Board in the Foss Catchment as well as the farming community and other land managers in the catchment. The project will both inform and share knowledge of how alterations to land management practice can make an effective impact on the volume of sediment reaching the confluence where the River Foss joins the Ouse.

8. Administrative details

8.1 Timescales

Project Start date	01/04/2022
Project End date	31/03/2025 (following the delivery and acceptance of all the deliverables / milestones listed in Table 5.1)
Project Duration	36 Months

8.2 Partners' contact details

Environment Agency Representative:

Simon Stokes
 Environment Agency, Lateral, 8 City Walk, Leeds, LS11 9AT.
 Tel: 07766420326
 simon.stokes1@environment-agency.gov.uk

North Yorkshire County Council Project Manager:

Hugh Clear Hill, North Yorkshire County Council, County Hall, North Allerton, North Yorkshire. DL7 8AD.
 Tel: 01609 533340 / 07773 627838
 Hugh.clearhill@northyorks.gov.uk

8.3 Partners' addresses for service of notices

Environment Agency	Sarah Bushnell Defra, Horizon House, Deanery Road, Bristol, BS1 5AH
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North Yorkshire County Council

Liz Small, Growth and Heritage Services Manager, NYCC, County Hall, Northallerton, North Yorks, DL7 9AD

8.4 Project Board

Members:

From the Environment Agency:

Simon Stokes – EA project representative
Matt Chapman – EA NEAS Representative
SUNO Catchment Co-ordinator – Board member

From NYCC:

Matthew Millington - Board member
Hugh Clear Hill – Board member

A Project Board will be set up to:-

- steer the progress of the project and set project objectives and timescales;
- monitor progress and difficulties encountered with the project;
- manage any proposed changes to the manner in which the project is run;
- manage the time spent on the project;
- manage the financial spend/invoices during the previous period;
- act as the technical quality review panel for the work and outputs. Key outputs may be subject to external peer review. The Project Board will review all draft reports produced by sub-contractors, prior to acceptance;
- seek to resolve difference and disputes arising between the partners.

Frequency of meetings: Quarterly

Chair and administration for meetings: Matthew Millington

Voting rules for meetings – majority

9. Communication, publicity and delivery of outputs

All written communications and outputs are to be submitted in draft form to the Project Board for review and comment, prior to approval. E-mail communications are acceptable but the delivering partner is responsible for ensuring that the receiving partner does receive these in a timely manner, noting that the external gateways used for e-mails are not 100% reliable.

Except for progress reports, final versions of outputs are to be submitted in hard copy and disc version.

10 Environmental considerations

The partners will adopt a sound proactive environmental approach during the project, designed to minimise harm to the environment.

Considerations shall include:

paper use: all documents and reports prepared in the project shall be produced wherever possible on recycled paper containing at least 80% post consumer waste and printed double sided;

travel: use of public transport, reduce face to face meetings by using email and videoconferencing. Meetings to be held in locations to minimise travel and close to public transport links;

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Appendix 1

packaging: should be kept to a minimum. Re-use and disposal issues must be considered;

efficient energy and water use;

disposal of waste: partners are responsible for the disposal of their own waste and should recycle where possible to minimise residual waste.

Appendix 2

Budgetary profile and payments - collaboration

Foss Catchment project
ENV0003008C

1. Budget

Partner		2021/22	2022/23	2023/24	2024/25	Total
Lead partner:	Staff time		£3000	£3000	£3000	£9000
Environment Agency:	Cash		£50,000	£60000	£90000	£200000
	Staff Time		£2500	£2500	£2500	£7500
Total			£55500	£65500	£95500	£216500

Values for staff time (and other contributions in kind) are estimated.

2. Payment schedule

Partner	Amount	Date / Milestone
Environment Agency		Upon completion of tasks as set out in Appendix 1
	£20000	Completion of Phase 1
	£30000	Phase 2 – Completion of task 1
	£60000	Phase 2 – Completion of task 2

	£90000	Phase 2 – Completion of task 3.
Total	£200000 total	As above

C: Payment procedures

All invoices submitted must quote the Agency's **Purchase Order (to be confirmed)** and department number **ENV0003008C** to ensure prompt payment. A copy of the invoice should also be sent to the Agency's Project Manager.

Invoices are to be addressed to:

APinvoices-ENV-U@gov.SSCL.com

APPENDIX 3 – DATA PROTECTION

1. This Appendix 3 applies where one Party processes data on behalf of another Party within the meaning of the Data Protection Legislation. Where this Appendix 3 applies, ‘the Controller’ means the Party which is the ‘controller’, and ‘the Processor’ means the Party which is the ‘processor’, in relation to such processing within the meaning of the GDPR.

2. In this Appendix 3 (including its Annexes):

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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 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 and/or the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy

“Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing” (and cognate terms) and “Data Protection Officer” have the meanings 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

“Joint Controllers” means two or more controllers (within the meaning of the GDPR who jointly determine the purposes and means of processing (and “Joint Control” shall be construed accordingly)

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

“Processor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement

“Protective Measures” means appropriate technical and organisational measures which may include but are not limited to: 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 such measures adopted by it including those outlined in Annex 1

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Processor in relation to this Agreement

“Working Day” means any day which is not a Saturday, a Sunday or a public holiday in England

reference to a 'paragraph' or 'Annex' is to a paragraph of, or Annex to, this Appendix 3 (as the case may be).

3. The Processing that the Processor is authorised to do is as exhaustively set out in Annex 1 by the Controller and may not be determined by the Processor.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - 5.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 5.2 an assessment of the necessity and proportionality of the Processing operations in relation to the purposes of such operations;
 - 5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
 - 6.1 Process that Personal Data only in accordance with Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 6.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 6.3 ensure that :
 - (a) the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Annex 1);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this paragraph 6;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

- 6.4 not transfer Personal Data outside of the United Kingdom and European Union unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 6.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination or expiry of this Agreement unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 8, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this 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.
8. The Processor's obligation to notify under paragraph 7 shall include the provision of further information to the Controller in phases, as details become available.
9. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request relating to such obligations (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Appendix 3. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
 - (b) the Controller determines that 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

Collaborative agreement – no research v1.4

Appendix 1

- (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Personal Data Processing activity by the Controller or the Controller's designated auditor.
 12. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
 13. Before allowing any Sub-processor to Process any Personal Data related to this Agreement, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
 14. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
 15. The Controller may, at any time on not less than 30 Working Days' notice, revise this Appendix 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall take effect on the expiry of such notice period).
 16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Agency may on not less than 30 Working Days' notice to the other Parties amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office (and any such amendment shall take effect on the expiry of such notice period).
 17. Where the Parties include two or more Joint Controllers as identified in Annex 1 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Annex 2 in replacement of paragraphs 1-16 for the Personal Data under Joint Control.

APPENDIX 3 – ANNEX 1: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

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

Sam Lumb, Data Protection Officer
DataProtection@environment-agency.gov.uk
Horizon House, Deanery Road, Bristol BS1 5AH

2. The contact details of the North Yorkshire County Council's Data Protection Officer are:
Veritau Ltd.

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 County Hall, Northallerton, North Yorkshire, DL7 8AD
 Email: - infogov@northyorks.gov.uk
 Tel: - 01609 532526

Appendix 1

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

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

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, Environment Agency is the Controller and North Yorkshire County Council is the Processor in accordance with Paragraph 1.
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the contract to carry out the works as outlined in the Specification.
Duration of the processing	<i>be07</i> 1 April 2022 – 31 March 2025
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, recording volunteer attendance and days, distribution of newsletters and updates.</p>
Type of Personal Data being Processed	The type of data being processed may include, but not be limited to: name, address, date of birth, NI number, telephone number, pay, images.
Categories of Data Subject	Categories of data subject may include but not be limited to: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under EU or member state law to preserve that type of data	The data will be retained for up to one year after the end date of this agreement at which point it must have been destroyed through means of deletion in the case of digital records or the shredding of paper documents.

APPENDIX 3 – ANNEX 2: JOINT CONTROLLER AGREEMENT

[Guidance: insert only where Joint Controller applies in Annex 1]

In this Annex the Parties must outline each Party's responsibilities for:

- providing information to Data Subjects under [Article 13 and 14](#) of the GDPR;
- responding to Data Subject Requests under [Articles 15-22](#) of the GDPR;
- notifying the Information Commissioner (and Data Subjects) where necessary about Personal Data Breaches;
- maintaining records of Processing under [Article 30](#) of the GDPR;
- carrying out any required Data Protection Impact Assessment.

The agreement must include a statement as to who is the point of contact for Data Subjects.
The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in paragraphs 4-16.

You may also wish to include an additional paragraph apportioning liability between the Parties arising out of the Data Protection Legislation in relation to data that is Jointly Controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the Agreement, this completed Annex 2 should be used instead of paragraph 1-17.

APPENDIX 4 – BACKGROUND RIGHTS
DETAILS OF BACKGROUND RIGHTS HELD BY THE PARTIES
Background Rights declared at the Commencement Date (to be updated during the Project)

Held by the Environment Agency

Proprietary owner of the Background Right	Name and description of Background Right (incl. type of IPR, format, date, product description, number, product number, geographical area, version number)	Proposed use in the Project

 Held by **[Party A]**

Proprietary owner of the Background Right	Name and description of Background Right (incl. type of IPR, format, date, product description, number, product number, geographical area, version number)	Proposed use in the Project

 Held by **[Party B]**

Proprietary owner of the Background Right	Name and description of Background Right (incl. type of IPR, format, date, product description, number, product number, geographical area, version number)	Proposed use in the Project

