



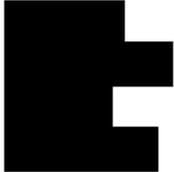
Department
for Environment
Food & Rural Affairs



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



Economics for the Environment Consultancy Ltd



Your ref:
Our ref:
Date:



Dear Sir / Madam

Award of contract for the supply of Biodiversity Net Gain: Market Analysis Study

Following your tender/ proposal for the supply of Biodiversity Net Gain: Market Analysis Study to Defra, we are pleased to award this contract to you.

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

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

- 1) The Services shall be performed at the Supplier’s premises, 

- 2) The charges for the Services shall be as set out in Annex 2
- 3) The specification of the Services to be supplied is as set out in Annex 3
- 4) The Term shall commence on 27th July 2020 and the Expiry Date shall be 31st December 2020 on which the contract will end unless extended or subject to early termination
- 5) The address for notices of the Parties are:

Customer

Supplier

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Email: [Redacted]

Email: [Redacted]

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

[Redacted]

7) For the purposes of the Agreement the Staff Vetting Procedures/data security requirements/equality and diversity policy/ and environmental policy are available at

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs> .

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

Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to: [REDACTED]. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

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

Liaison

For general liaison your contact will continue to be [REDACTED] [REDACTED]

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to [REDACTED] at the email address below **within 7** days from the date of this letter. This will then be sent to you via our e-sourcing system (Bravo) for electronic acceptance. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours sincerely

[REDACTED]

[REDACTED]
Commercial Lead
Defra group Commercial

[REDACTED]

Signed for and on behalf of:

Name [REDACTED]
Senior Policy Advisor

Signature: [REDACTED]

Date:

Name: [REDACTED]
Buyer name
(Procurement)

Signature: [REDACTED]

Date: [REDACTED]

We accept the terms set out in this letter and its Annexes, including the Conditions.

Signed for and on behalf of Economics for the Environment Ltd (Eftec)

Name: [REDACTED]

Signature: [REDACTED]

Date: [REDACTED]

Annex 1

Terms and Conditions of Contract for Services

1 Interpretation

1.1 In these terms and conditions:

- “Agreement” means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
- “Award Letter” means the letter from the Customer to the Supplier printed above these terms and conditions;
- “Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (a) Government Department;
 - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
 - (c) Non-Ministerial Department; or
 - (d) Executive Agency;
- “Charges” means the charges for the Services as specified in the Award Letter;
- “Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Customer” means the person named as Customer in the Award Letter;
- “DPA” means the Data Protection Act 1998;
- “Expiry Date” means the date for expiry of the Agreement as set out in the Award Letter;
- “FOIA” means the Freedom of Information Act 2000;

“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are

open for business in the City of London.

- 1.2 In these terms and conditions, unless the context otherwise requires:
 - 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
 - 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2 Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within [7] days of the date of the Award Letter.

3 Supply of Services

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

4 Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall

expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.

- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
 - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
 - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of

performing (or contributing to the performance of) the whole or any part of this Agreement.

- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6 Premises and equipment

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7 Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall comply with any such notice.

7.2 The Supplier shall:

- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8 Assignment and sub-contracting

8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 Intellectual Property Rights

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

9.2 All intellectual property rights in any materials created or developed by the Supplier

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

9.3 The Supplier hereby grants the Customer:

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

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

(a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

(b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

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

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

10 Governance and Records

10.1 The Supplier shall:

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

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

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

11 Confidentiality, Transparency and Publicity

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it

accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 12.

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

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall

not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 Freedom of Information

12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Protection of Personal Data and Security of Data

13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:

13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

13.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;

13.2.3 promptly notify the Customer of:

- (a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
- (b) any request for personal data; and

13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

14 Liability

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

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

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

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

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

14.4 The Supplier's liability under the indemnity in clause 9.4 shall in no event exceed a sum equal to [REDACTED].

14.5 The Supplier's liability under the indemnity in clause 18.3 shall in no event exceed a sum equal to [REDACTED].

15 Force Majeure

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

16 Termination

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
 - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
 - 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:

- 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17 Compliance

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
 - 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Supplier shall:
 - 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
 - 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
 - 17.5.1 the Official Secrets Acts 1911 to 1989; and
 - 17.5.2 section 182 of the Finance Act 1989.

18 Prevention of Fraud and Corruption

- 18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
 - 18.3.1 terminate the Agreement and recover from the Supplier the amount of any

loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

- 18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

19 Dispute Resolution

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

20 General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to

either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21 Notices

21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

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

22 Governing Law and Jurisdiction

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

Annex 2 – Charges

Pricing Schedule

Tenderers must complete the following pricing schedule.

All prices must be quoted in pounds sterling, exclusive of VAT. All prices are to remain fixed for the duration of the contract.

We effect offer to supply under this contract, the services as described in the specification and throughout

the tender document, in accordance with the Defra Terms and Conditions of Contract, for the following sums;

Resource and Pricing Schedule

Activity	Resource	Grade/Job Title	Hourly Rate	No of hours to complete activity	Total
<i>(please list the activities required to meet this commission)</i>	<i>(please add the name of the person carrying out the activity, use a new line for additional people required for the same task)</i>		(£)		(£)
WP0	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
WP1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TOTAL

■ ■

Payment Schedule

The table below gives a summary of the tasks in each work package and the date each task should be completed by. The Authority proposes two payment milestones for this project, September 2020 and December 2020, based on the value of the work completed. The pricing schedule above describes the key personnel involved in completing each task, their fixed hourly rate and number of hours contributed by each person.

Task	Brief Description	Due Date
WP1.1	Rapid literature review to identify the influencing factors on whether developers will meet their net gain requirements on-site.	Sep 2020
WP1.2	Develop modelling assumptions and provide local authority-level quantitative modelling of demand for off-site biodiversity units.	Sep 2020
WP1.3	Test demand modelling assumptions and gather informed views on how demand is likely to change over time.	Dec 2020
WP1.4	Revise demand modelling assumptions and datasets and provide updated local authority-level quantitative modelling of demand, including 5 and 10 year forecasts.	Dec 2020
WP2.1	Rapid literature review to establish the broad types of land and habitat that could be offered and the proportion in different locations.	Sep 2020

Task	Brief Description	Due Date
WP2.2	Develop modelling assumptions and select suitable datasets, define the baseline level of provision and provide local authority-level quantitative modelling of off-site biodiversity unit supply.	Sep 2020
WP2.3	Rapid literature review to identify types of habitat project, factors in deciding to offer projects to the market and enablers and barriers for market expansion.	Dec 2020
WP2.4	Test modelling assumptions, gather informed views on change over time and generate case studies.	Dec 2020
WP2.5	Revise supply modelling assumptions and provide updated local authority-level quantitative modelling of supply, including 5 and 10 year forecasts.	Dec 2020
WP3.1	Develop a methodology to calculate market prices for biodiversity units.	Sep 2020
WP3.2	Develop a robust set of modelling assumptions and provide local authority-level quantitative modelling of biodiversity unit prices.	Sep 2020
WP3.3	Test price methodology and modelling assumptions.	Dec 2020
WP3.4	Revise price methodology, modelling assumptions and datasets and provide updated local authority-level quantitative modelling of prices, including 5 and 10 year forecasts.	Dec 2020

The contract allows the Customer the option to extend the study to include the option detailed on page 6 of Eftec's submission document – Task III: Interviews, which covers the work of WP 1.3, 2.4 and 3.3. The costs for this extension will be negotiated and agreed by the Contract Manager, with agreement from Eftec. If required, this option will be detailed in the Change Control Note (Annex 5) and submitted via Bravo for electronic acceptance by the Supplier.

Annex 3 – Specification

Policy Background

Net gain is an approach to development that aims to leave the natural environment in a measurably better state than beforehand. The 25 Year Environment Plan sets out the commitment to embed an environmental net gain principle for development including housing and infrastructure.¹ As a first step in achieving this commitment, the Government launched a consultation in December 2018 on whether or not to make biodiversity net gain (BNG) a mandatory requirement for all developments under the Town and Country Planning Act. Defra released a response to the consultation in July 2019 and published an impact assessment in October 2019².

The Environment Bill³ was introduced into parliament on 15 October 2019 and re-introduced following a general election on 30 January 2020. The Bill will make it mandatory for new housing and other development in scope to achieve at least a 10% net gain for biodiversity – a requirement that habitats for wildlife must be left in a measurably better state than before the development as measured by a standard metric⁴. Developers must submit a ‘biodiversity gain plan’ alongside usual planning application documents. The local authority must assess whether the 10% net gain requirement is met in order to approve the biodiversity gain plan.

If net gain is not achievable on-site, the biodiversity gain plan will need to include off-site habitat provision, in line with the mitigation hierarchy; the local authority must be satisfied that this is secured through a planning obligation or conservation covenant. If habitat provision within the development site is significant, these improvements must be secured in the same way or through a planning condition. Small sites will follow a simplified assessment process. Householder development and brownfield development with viability issues and not impacting priority habitats will be exempt. Mandatory BNG will be implemented after a two year transition period following royal assent of the Bill.

The Bill also lays the foundation for the 25 Year Environment Plan’s Nature Recovery Network that will deliver on the recommendations of the Making Space for Nature review⁵. It establishes spatial mapping and planning tools – Local Nature Recovery Strategies (LNRSs) - to help inform nature recovery and the actions and incentives to drive change on the ground. LNRSs will guide smooth and effective delivery of biodiversity net gain and other nature recovery measures by helping developers and planning authorities avoid the

¹ [Defra 25 Year Environment Plan and annexes, including evidence report](#)

² [Net gain: consultation, response and impact assessment](#)

³ [Environment Bill documents including impact assessment](#)

⁴ [Updated biodiversity metric](#)

⁵ [Making Space for Nature, 2010](#)

most valuable existing habitat and focus habitat creation or improvement where it will achieve the most.

The impact assessment indicates BNG and LNRs are expected to result in the creation and the avoidance of loss of several thousands of hectares of habitat for wildlife each year, delivering annualised natural capital benefits of around £1.4 billion. It is the intention that the use of the biodiversity metric, along with clearly mapped strategic priorities for nature will, together, contribute to the growth of a vibrant and fluid market in habitat provision (i.e. improving habitat quality for wildlife) to help deliver these benefits.

There is already a nascent market in habitat provision for developers, in addition to private payments for ecosystem services and public investment via agri-environment schemes. This is driven by local planning policy and decisions to comply with the biodiversity mitigation hierarchy⁶ through offsetting, district level licensing and providing alternative natural green spaces to protect European designated wildlife sites. Local authorities already require BNG in Coventry, Lichfield, Warwickshire, Solihull and Sutton. Brokers, agents, local authorities and conservation bodies are already working with developers and landowners to deliver development-funded habitat provision.

Under mandatory BNG land owners and managers will be paid by developers where they have committed to carry out work to deliver a gain in biodiversity units⁷ as measured by the biodiversity metric and monitor and maintain that gain for at least 30 years. The work will consist of the creation, restoration or enhancement of habitats on land through management activities. The carrying out of the work and maintenance must be enforceable either by a responsible body under a conservation covenant or by a local authority under a planning obligation. Where a development results in the loss of ecologically distinctive habitats then similar habitats should be delivered as part of the gain. The parties involved, which might be multiple including contractors and enforcement bodies, will agree prices and payment arrangements between themselves. These commercial arrangements are not governed by the legislation.

The market will be supported by a public register to provide transparency in offsite habitat provision for developers, planning authorities and others. In order to allocate biodiversity gains to a development (and receive any payment) habitat provision projects will need to meet the eligibility requirements to be registered, which will be detailed in secondary legislation. Developers may register land they own where they do not intend to develop it to deliver gains for their own or others' developments.

The risk that the market supply of habitat provision will not satisfy demand, because the market is still establishing, will be addressed by government's plan to provide a supply of

⁶ [Planning practice guidance for biodiversity, geodiversity and ecosystems](#)

⁷ Gains in biodiversity units can be delivered by increasing the extent, distinctiveness or condition of habitats, with an incentive for habitat created or enhanced in areas of strategic priority.

statutory biodiversity credits. The sold credits will be equivalent to a specified gain in biodiversity units. The government stated its intention in the consultation response to conduct a review of the price of biodiversity units following engagement with stakeholders before setting a price. The intention is to set the price of biodiversity credits higher than market prices paid by developers to habitat providers for the same number of biodiversity units. Proceeds from the sale of credits will be spent by government on habitat provision where that would contribute to strategic ecological networks and provide long term environmental benefits.

Understanding how both the supply and demand side of the market for habitat provision will respond and evolve to mandatory BNG in England will help determine the level of short to medium-term demand for biodiversity credits. It will also help identify what, if any, further government interventions might be needed for a market in biodiversity units to operate fairly, consistently and to deliver the desired outcomes for the environment. Understanding price levels in the market and their drivers will provide evidence for the credit price review.

In essence the study concerns a market in biodiversity units bought by developers. The production of a biodiversity unit may involve multiple actors – land owners and those carrying out habitat creation, maintenance, monitoring or enforcement. The total unit price would need to cover the necessary costs and incentives. These will vary, for instance with the alternative uses available on the land in question or with more intensive forms of habitat creation.

Requirements of the study

The study will build on the policy and economic model described above and in the impact assessment, with a greater focus on the operation of the habitat market to provide off-site biodiversity gains.

Aim: to identify influencing factors on and model the demand, supply and price of biodiversity units within the habitat provision market under mandatory BNG.

Objectives:

- develop understanding on how the habitat provision market will respond and evolve in advance of mandatory BNG in England and for 5-10 years after implementation.
- estimate the demand for biodiversity credit delivery by government acting as a provider of last resort.
- provide evidence of market prices and how they vary to inform the credit price review.
- inform the development of the mechanism to dispose of government biodiversity credit liability.

Related work

A range of closely related work has taken place⁸ or is underway relevant to the objectives above, which this market analysis study will complement with additional findings to meet the study aim:

- The **Net gain Parliamentary Office of Science and Technology Brief**⁹ explains BNG in the context of previous no-net-loss approaches, the mitigation hierarchy and biodiversity offsetting as well as governance and technical challenges involved in delivery.
- The **Net gain: Summary of responses and government response** contains statements of government policy and views expressed by planning authorities, conservation organisations, ecological consultants and the development industry in response to consultation. The consultation asked about the growth of the habitat market in response to mandatory BNG and the impact of a proposed tariff option with a fixed rate within the range £9k-£15k per biodiversity unit. There were also questions in relation to the biodiversity mitigation hierarchy and spatial preference for habitat delivery which are relevant to market demand.
- The **BNG and LNRS Impact Assessment** evidences the rationale for mandatory BNG and sets out a cost benefit analysis with its assumptions, including estimated levels of avoided habitat loss and habitat creation, the costs of on or off-site delivery and impacts on development viability.
- The Defra BNG team can provide further details to an approved contractor on background evidence including analysis of the type and location of land cover change due to development and of the impact of BNG on housing viability. The team can provide details of known local authorities already delivering BNG through local policy and further explain the theoretical economic case for biodiversity credits in terms of:
 - the **rationale** for government intervention to act as a provider of last resort.
 - **factors** expected to determine the demand, supply and price of biodiversity units on the market and statutory biodiversity credits.
 - relevant **datasets** where these have already been identified.

⁸ [Net gain: consultation, response and impact assessment](#)

⁹ [Net gain POST brief](#)

The study will draw on relevant findings from the wider Defra evidence base and avoid replicating existing research¹⁰. The Defra BNG team can discuss access to expertise within Defra group with an approved contractor, relating to:

- existing **land management** and **agri-environment**¹¹ schemes, where relevant to landowner behavior and market demand and supply.
- Natural England's offsetting scheme for **District Level Licensing**¹² for great crested newts.
- Development of the new **Environmental Land Management (ELM)**¹³ scheme to replace existing payments under the Common Agricultural Policy and provide farmers, foresters and other land managers with an opportunity to secure financial reward in return for delivering environmental benefits.

Finally, the study will be facilitated by Defra and Natural England's stakeholder relationships with early movers in the BNG habitat market and contacts with the development industry.

Scope of investigation, analysis and advice

This project will include three interrelated work packages, which build on and make the most of existing understanding. The parallel work packages described below will inform each other to generate both interim and final study findings. Tenderers are encouraged to demonstrate innovative approaches where that would meet the study objectives and outcomes for each task.

Work Package 1: Demand

Task WP1.1

- Rapid literature review to identify the influencing factors on whether developers will meet their net gain requirements on-site with a focus on grey literature relating to:
 - developer commercial considerations and motivations.
 - green infrastructure and biodiversity in development design.
 - delivery of biodiversity net gain under existing policies.
- Relevant influencing factors will include:
 - ecological conditions (the biodiversity value of development sites and application of the mitigation hierarchy under existing planning policy).
 - commercial considerations (including whether BNG forms part of the marketing approach and profit impacts of on-site provision relative to the type, location and built footprint of development).
 - other motivations (culture, corporate social responsibility and familiarity with delivering BNG among developers).
 - time to incorporate BNG into development design since introduction of the

¹⁰ [Defra Science and Research Projects](#)

¹¹ [Initial Evaluation of the implementation of Countryside Stewardship in England](#)

¹² [District Level Licensing](#)

¹³ [Environmental Land Management](#)

Environment Bill and including a 2 year transition period after royal assent.

Task WP1.2

- Develop modelling assumptions and select suitable datasets to assess the degree to which developers are likely to meet their net gain requirements through on-site provision by quantifying the combined effect of influencing factors on design decisions and estimating how that will change over time. This should elaborate on the assumptions for mandatory net gain policy as outlined in the government's consultation response and impact assessment.
- Provide local authority-level quantitative modelling for all areas in England of the likely levels of demand for off-site biodiversity units based on these assumptions about the level of on-site delivery for different types of development. Estimates will be based upon published growth forecasts for development in scope for the first year of mandatory BNG implementation. The estimates will assume that biodiversity units are available at market prices in WP3.2 in line with the anticipated level of supply in WP2.2 or with a moderate increase on market price where market supply is not available.

Task WP1.3

- Test demand modelling assumptions with officials and through interviews with representative samples of:
 - developers or their agents in terms of
 - sector.
 - development size.
 - scale of operations.
 - environmental specialists with experience of providing habitats on development sites.
- Gather informed views on how demand is likely to change over time. Identify novel insights that expand on related work already carried out.

Task WP1.4

- Revise demand modelling assumptions and datasets in light of interviews and add assumptions on how demand is likely to change over time.
- Provide updated local authority-level quantitative modelling for all areas in England of the likely levels of demand for off-site biodiversity units based on the improved assumptions about the level of on-site delivery for different types of development. Estimates will be based upon published growth forecasts for development in scope for the first year of mandatory BNG implementation and over a 5 and 10 year timeframe. The estimates will assume that biodiversity units are available at market prices in WP3.2 in line with the anticipated level of supply in WP2.5 or with a moderate increase on market price where market supply is not available.

Work Package 2: Supply

Task WP2.1

- Rapid literature review to identify and characterise different types of land that could

deliver habitat provision across England or is already doing so, with a focus on grey literature relating to:

- land use and land management including conservation and farm systems in England.
- habitat provision for planning requirements, environmental payments or nature conservation projects.
- Establish the broad types of habitat that could be offered by different types of land defined by existing land use, management or land cover.
- Assess the proportion of different types of land in different locations across England that is available already for habitat provision (the baseline before market expansion) and how this might change over time.

Task WP2.2

- Develop modelling assumptions and select suitable datasets to quantify the amount and location of types of land that could offer habitat provision.
- Define the baseline level of provision and a range of scenarios for how readily market supply responds to the demand estimated in WP1.2. Tenders should include proposals for modelling a scenario reflecting the impacts of the transition to ELM on supply.
- Provide local authority-level quantitative modelling for all areas in England of the likely supply of biodiversity units available for developers to purchase from markets based on the type of land and availability scenarios above. Estimate the current baseline supply and forecast the likely supply for the first year of BNG implementation. Highlight any broad patterns in supply as well as any mismatch in geography or habitat type with demand.

Task WP2.3

- Rapid literature review to identify types of habitat project, what potential providers will consider when entering the market and the enablers and barriers to market expansion. Focus on grey literature relating to:
 - habitat provision for planning requirements, environmental payments or nature conservation projects.
 - land markets and commercial management decisions.
 - markets for habitat provision, including domestic and international examples.
- Describe the most common types of habitat project that are likely to make up market supply defined by their size and land management (e.g. within an existing farm system or by a conservation body) and for each set out:
 - the main up-front activities that will contribute to transaction costs, such as assessing land management alternatives and developing habitat project plans, capturing how these vary by project type.
 - long-term management and payment models and a high-level assessment of their costs and benefits.
- Identify the commercial issues and alternatives as well as other motivations that different types of land owners and managers will consider when setting aside land for habitat creation and maintenance for a 30 year minimum period to enable the sale of biodiversity units to developers. This will include but may not be limited to:

profitability or financial risks within the land's current farming system or enterprise; current alternatives for environmental payments, including agri-environment schemes; and attitudes towards nature conservation or enabling development.

- Identify the principle enablers and barriers that are likely to change the level and rate of increase of market supply. This will include factors that affect the level of participation by relevant actors, such as awareness, acceptance, perception of up-front transaction costs and the degree of certainty required around income and long-term costs.

Task WP2.4

- Test modelling assumptions, project types, determinants of provider decisions, market enablers and market barriers with officials and through interviews with representative samples of:
 - land owners, managers or agents in terms of land use, including different farming systems.
 - environmental specialists with habitat provision experience.
- Gather informed views on how supply is likely to change over time.
- Interviews will also generate case studies and explore the potential constraints on the market with actors to provide suggestions of how these might be overcome to accelerate expansion.

Task WP2.5

- Revise supply modelling assumptions, scenarios and datasets in light of interviews and add assumptions on how supply is likely to change over time after BNG implementation.
- Provide updated local authority-level quantitative modelling for all areas in England of the likely supply of biodiversity units available for developers to purchase from markets based on the type of land and availability scenarios above. Estimate the current baseline supply and forecast the likely supply for the first year of BNG implementation and over a 5 and 10 year timeframe. Highlight any broad patterns in supply as well as any mismatch in geography or habitat type with demand. This will include scenarios which illustrate how the level and geographical distribution of supply changes with prices above or below prices estimated in WP3.4.

Work Package 3: Price

Task WP3.1

- Develop a methodology to calculate market prices per biodiversity unit for habitat provision with reference to benchmark prices from existing suppliers, any suitable proxy benchmarks¹⁴ and price components including:
 - Acquisition or opportunity cost of land, including variation by existing use, size of project and location across England.
 - Ecological survey and management plan costs.

- Habitat creation and maintenance costs, including variation by habitat type and location across England.
- Additional revenue to offset costs, where not in conflict with habitat provision.
- Up-front transaction and ongoing administrative costs including monitoring and enforcement by agreement holders (responsible bodies or planning authorities) and their variation by different types of project defined by size and land management.
- Any further minimum profit or incentive for necessary market actors.

Task WP3.2

- Develop a robust set of modelling assumptions and select datasets to calculate likely market prices for biodiversity units from the different types of supply identified in WP2.1. The assumptions will set out how they account for the amount and type of supply and demand in WP1.2 and WP2.2, assuming that government will act as a supplier of last resort without undercutting the market.
- Provide local authority-level quantitative modelling for all areas in England of market prices based on the above methodology and assumptions for the first year of BNG implementation and at 5 and 10 years after implementation. This will include any variation by key factors including habitat type and geographical location across England. Where prices vary the model will make clear what quantity of estimated supply in WP2.2 relates to each price band.

Task WP3.3

- Test price methodology and modelling assumptions with officials and through interviews with representative samples of:
 - developers or their agents in terms of sector, development size and scale of operations.
 - land owners, managers or agents in terms of land use, including different farming systems.
 - environmental specialists with habitat provision experience.

Task WP3.4

- Revise price methodology, modelling assumptions and datasets in light of interviews.
- Provide updated local authority-level quantitative modelling for all areas in England of market prices for the first year of BNG implementation and at 5 and 10 years after implementation. This will include any variation by key factors including habitat type and geographical location across England. Where prices vary the model will make clear what quantity of estimated supply in WP2.5 relates to each price band.

¹⁴ Proxy benchmarks might be derived from agri-environment schemes or other environmental payments

Deliverables

The expected deliverables of this commission are:

By September 2020

- A workshop to discuss interim study findings and assumptions with policy and evidence officials.
- Interim findings of demand, supply and price modelling, including the full range of price values by habitat type and geographic location across England. This will include:
 - Summary findings from WP1.1 and WP2.1
 - Summary price methodology from WP3.1
 - Summary modelling assumptions from WP1.2, WP2.2 and WP3.2.
 - One or more editable spreadsheet models with biodiversity unit demand, supply and price calculations and figures down to the local authority-level for WP1.2, WP2.2 and WP3.2

By December 2020

- A workshop to discuss final study findings and assumptions with policy and evidence officials.
- A clear, concise, robust and evidence-based report with a full write-up of all research and modelling tasks from all work packages as well as overarching findings and recommendations for policy. The report will detail the methodology and findings of the rapid reviews and interviews, price methodology modelling assumptions, data and calculations and policy recommendations. The report will highlight real or hypothetical case studies of market schemes to provide biodiversity units.
- One or more editable spreadsheet models, producing biodiversity unit demand, supply and price calculations and figures down to the local authority-level for WP1.4, WP2.5 and WP3.4.

Progress reports are required for this project each fortnight, which will help to maintain the quality throughout and manage risks. Procedures for dealing with study risks and preventing negative impacts to the project should also be detailed in tenders, with risks including:

- Conditions for conducting interviews due to changes in staff availability from interviewee organisations and the way society is able to interact.
- Remote availability or licensing restrictions of datasets.

Glossary

Agri-environment schemes	Voluntary agreements that provide annual payments to farmers and land managers to ensure they manage their land in an environmentally sensitive way that goes clearly beyond the minimum required of them by regulation.
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Biodiversity net gain	Delivering more or better habitats for biodiversity and demonstrating this measurable gain through use of the Defra biodiversity metric.
Biodiversity unit	A unit as measured by the biodiversity metric which represents a combined measure of habitat distinctiveness, area and condition. The production of a biodiversity unit in the habitat market refers to an increase in the biodiversity value of land by one unit.
Conservation covenants	Voluntary but legally binding agreements under the Environment Bill between a landowner and a designated “responsible body” such as a conservation charity, public body or for-profit body to conserve the natural or heritage features of the land.
District level licensing	Conservation of great crested newts at a geographical scale broader than the development site in question. It can allow harm to individual newts and their habitat caused by a development to be compensated for by the creation and/or restoration of suitable amounts of new habitat elsewhere.
Local-authority level	For the purpose of this study this refers to figures produced for individual district councils, unitary authorities, metropolitan districts and London boroughs.
Ecosystem services	The services provided by natural capital, such as pollination and biomass which lead to benefits to society.
Environmental land management	Founded on the principle of “public money for public goods”, ELM will be the cornerstone of agricultural policy now we have left the EU. The Agriculture Bill will provide the underpinning legislative framework for the scheme. ELM will provide farmers, foresters and other land managers with an opportunity to secure financial reward in return for delivering environmental benefits.
Environmental net gain	In short, this means improving all aspects of environmental quality through a scheme or project. Achieving environmental net gain means achieving biodiversity net gain first, and going further to achieve increases in the capacity of affected natural capital to deliver ecosystem services and make a scheme's wider impacts on natural capital positive.
Habitat provision	The creation, restoration or enhancement of habitats where that would deliver additional gains in biodiversity units eligible to be included in a biodiversity gain plan.

Local Nature Recovery Strategies	Local Nature Recovery Strategies are a new system of spatial strategies for nature under the Environment Bill, covering the whole of England. Locally led by an appropriate “responsible authority”, these will identify the opportunities and priorities for enhancing biodiversity and supporting wider objectives such as mitigating or adapting to climate change in an area.
Mitigation hierarchy	The principle that environmental harm resulting from a development should be avoided (through locating development where there will be less harmful impacts), adequately mitigated, or, as a last resort, compensated for.
National Planning Policy Framework	The National Planning Policy Framework sets out government's planning policies for England and how these are expected to be applied.
Nature Recovery Network	An expanding and increasingly connected network of wildlife-rich habitat. It will be designed to stimulate the recovery of wildlife and will support the delivery of other economic and social benefits, such as water quality improvement or flood attenuation.
Offsetting	The creation or enhancement of wildlife habitat to compensate for loss or degradation elsewhere.
Planning authority	A planning authority is responsible for deciding whether a development, which could be anything from an extension on a house to a new shopping centre, should go ahead. This includes borough, district and county councils, unitary authorities, national park authorities and development corporations where relevant.
Planning conditions	The Town and Country Planning Act enables the local planning authority in granting planning permission to impose “such conditions as they think fit”. This power needs to be interpreted in light of material considerations such as the National Planning Policy Framework
Planning obligations	Planning obligations are legal obligations under Section 106 of the Town and Country Planning Act entered into to mitigate the impacts of a development proposal by a person with an interest in the land and the local planning authority.

Annex 4
Key Performance Indicators

Metric	KPI (if any of the deliverables are deemed not to meet the Minimum Standard the over-arching KPI itself will be 'failed')	What is required to make this measurable	KPI Measurement	Minimum Standard (KPI Failure)	Acceptable Standard
Contract Management	KPI 1: Submission of Invoices	Invoices produced within ten (10) working days of Defra confirming the Company's achievement of a milestone	Defra will review all invoices submitted by the Company to check that the following information is included and is correct: <ul style="list-style-type: none"> • Purchase order number • Defra contact details • Contract number • Qualitative description of the work completed • Clearly itemise all costs and link these to the milestones achieved and signed off 	Invoices sent to Defra which contain inaccuracies and/or greater than ten (10) working days after the agreed deadline	Meets expectations – all invoices sent to Defra on time and accurately reflect agreed work
Delivery	KPI 2: Project Management	Milestones achieved by the dates specified in the Specification of Requirements	Defra will review the Company's progress against the milestones and confirm whether the milestones have been achieved in line with the dates specified	Milestones not achieved by the deadline	Milestones achieved by the deadline
Quality	KPI 3: Research Quality	Reports show that the research analysis undertaken has been rigorous, relevant and meets the Key Objectives set out in the Specification of Requirements	Defra will assess the quality and completeness of the reports against the Key Objectives set out in the Specification of Requirements	Reports are of a poor quality and/or contain errors and/or do not achieve all of the Key Objectives	Reports are of a high quality, error free and achieve all of the Key Objectives

Annex 5 CHANGE CONTROL

Contract Change Note ("CCN")

CCN Number	01
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a contract for the (title of contract) dated (date) (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	
	Previous Contract Changes	
	Contract Change Note	
	New Contract Value	
Revised Payment Schedule	No change to costing schedule.	
Revised Specification	The specification will change from that drafted in the original contract to the text drafted in the summary section above.	
Revised Contract Period		
Change in Contract Manager(s)	N/A no change to contract manager	
Other Changes	N/A no other changes	

2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

Authorised Authority Representative

Name:

Date: 2020

Defra Commercial Officer
(FSOD Sign off up to £500k)

Name

Date.....

Authorised Contractor Representative.....

Name.....

Date.....