Conditions of Contract

Short Form Services

Assessment of the regulation system for water voles

ECM:62803

October 2021

THIS CONTRACT is dated 27 October 2021

BETWEEN

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

MD Ecology Limited of 10 St Peters Road, Cirencester, Gloucestershire GL7 1RG (the “Supplier”)

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

BACKGROUND

a) The Authority requires the services set out in Schedule 1 (the “Services”).

b) The Authority has awarded this contract for the Services to the Supplier and the Supplier agrees to provide the Services in accordance with the terms of the contract.

AGREED TERMS

1. Definitions and Interpretation

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

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

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

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

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

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

‘Data Loss Event’: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

‘Data Protection Impact Assessment’: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

‘Data Protection Legislation’: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

‘Data Protection Officer’: has the meaning given in the GDPR.

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

‘Data Subject Request’: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

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

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

‘DPA 2018’: the Data Protection Act 2018.

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

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

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

‘Good Industry Practice’: standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under similar circumstances.

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

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

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

a) furnished to or made available to the Supplier by or on behalf of the Authority; or

b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

‘VAT’: Value Added Tax.

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

1.2 The interpretation and construction of the Contract is subject to the following provisions:

a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

b) words importing the masculine include the feminine and the neuter;

c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;

f) references to the Services include references to the Goods;

g) references to Clauses and Schedules are to clauses and schedules of the Contract; and

h) the Schedules form part of the Contract and have affect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

2. Contract and Contract Term

2.1 The Supplier shall provide the Authority with the services set out in Schedule 1 (the “Services”) in accordance with the terms and conditions of the Contract.

2.2 The Contract is effective on the 1 November 2022 (the “Commencement Date”) and ends on the 24 March 2022 (the “Expiry Date”) unless terminated early or extended in accordance with the Contract.

3. Price and Payment

3.1 In consideration of the Supplier providing the Services in accordance with the Contract, the Authority shall pay the Price to the Supplier.

3.2 The Authority shall:

a) provide the Supplier with a purchase order number ("PO Number"); and

b) pay all undisputed sums due to the Supplier within 30 days of receipt of a Valid Invoice.

3.3 A Valid Invoice shall:

a) contain the correct PO Number;

b) express the sum invoiced in sterling; and

c) include VAT at the prevailing rate as a separate sum or a statement that the Supplier is not registered for VAT.

3.4 The Supplier shall submit invoices on delivery of the final report as set out in the specification to the Authority at the following addresses: Accounts-Payable.neg@sscl.gse.gov.uk or SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ

3.5 The Supplier acknowledges that:

a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Authority will not be liable to pay the Supplier any additional VAT;

b) invoices which do not include the information set out in Clause 3.3 will be rejected.

3.6 Any late payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

3.7 The Supplier shall not suspend provision of the Services if any payment is overdue.

3.8 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract.

4. Extension of the Contract

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

5. Warranties and Representations

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

a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Contract and to provide the Services;

b) the Contract is executed by a duly authorised representative of the Supplier;

c) in entering the Contract it has not committed any Fraud;

d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;

e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;

g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;

h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and

i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

j) it will comply with its obligations under the Immigration, Asylum and Nationality Act 2006.

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

a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;

b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and

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

6. Service Standards

6.1 The Supplier shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.

6.2 If the Services do not meet the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as may be specified by the Authority.

6.3 The Authority may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods. If the Authority rejects any of the Goods it may (without prejudice to its other rights and remedies) either:

a) have the Goods promptly either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until the repair or replacement has occurred;
or

b) treat the Contract as discharged by the Supplier’s breach and obtain a refund (if the Goods have already been paid for) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining replacements.

6.4 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 6.3.

6.5 If the Authority issues a receipt note for delivery of the Goods it shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.

6.6 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for 3 years from the date of acceptance. If the Authority shall within such guarantee period or within 30 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall choose) free of charge.

6.7 Any Goods rejected or returned by the Authority pursuant to this Clause 6 shall be returned to the Supplier at the Supplier's risk and expense.

7. Termination

7.1 The Authority may terminate the Contract at any time by giving 30 days written notice to the Supplier.

7.2 The Authority may terminate the Contract in whole or in part by notice to the Supplier with immediate effect and without compensation to the Supplier if:

a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;

b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;

c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;

d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;

e) subject to Clause 7.3, the Supplier commits a Default;

f) there is a change of control of the Supplier; or

g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Authority).

7.3 If the Supplier commits a Default which is capable of being remedied, the Authority may terminate the Contract pursuant to Clause 7.2(e) only if the Supplier has failed to remedy the Default within 20 Working Days of being notified of the Default by the Authority.

8. Consequences of Expiry or Termination

8.1 If the Authority terminates the Contract under Clause 7.2:

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

b) no further payments shall be payable by the Authority to the Supplier (for the Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under Clause 8.1(a).

8.2 On expiry or termination of the Contract the Supplier shall:

a) co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier; and

b) procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services) shall be delivered promptly to the Authority.

8.3 Save as otherwise expressly provided in the Contract:

a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 3, 8 to 13, 17, 26 and 28.

9. Liability, Indemnity and Insurance

9.1 Notwithstanding any other provision in the Contract, neither Party excludes or limits liability to the other Party for:

a) death or personal injury caused by its negligence;

b) Fraud or fraudulent misrepresentation; or

c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.

9.2 The Supplier shall indemnify and keep indemnified the Authority against all claims, proceedings, demands, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise in tort (including negligence) default or breach of the Contract to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or Fraud of itself or of Staff or Sub-contractors save to the extent that the same is directly caused by the negligence, breach of the Contract or applicable law by the Authority.

9.3 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

9.4 Subject to Clause 9.1:

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

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

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

(iii) indirect or consequential loss or damage

b) each Party's total aggregate liability in respect of all claims, losses damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall not exceed £1,000,000 (one million pounds) or 2x the value of the Contract whichever is the lower amount.

9.5 The Supplier shall, with effect from the Commencement Date and for such period as necessary to enable the Supplier to comply with its obligations under the Contract, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Term and for a minimum of 6 years following the end of the Contract.

9.6 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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

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

9.9 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

10. Confidentiality and Data Protection

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

10.2. Clause 10.1 shall not apply to any disclosure of information:

a) required by any applicable law;

b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;

c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 10.1; or

d) which is already lawfully in the Supplier's possession prior to its disclosure by the Authority.

10.3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 3. The only processing that the Supplier is authorised to do is listed in Schedule 3 by the Authority and may not be determined by the Supplier.
10.4. The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

10.5. The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

a. a systematic description of the envisaged processing operations and the purpose of the processing;

b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

c. an assessment of the risks to the rights and freedoms of Data Subjects; and

d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

10.6. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

a. process that Personal Data only in accordance with Schedule 3 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

b. ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

c. ensure that:

(i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 3);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

A. are aware of and comply with the Supplier's duties under this clause;

B. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

d. not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

e. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Supplier is required by Law to retain the Personal Data.

10.7. Subject to clause 10.8 the Supplier shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

a. receives a Data Subject Request (or purported Data Subject Request);

b. receives a request to rectify, block or erase any Personal Data;

c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

d. receives any communication from the Information Commissioner or any other regulatory authority;

e. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

f. becomes aware of a Data Loss Event.

10.8. The Supplier’s obligation to notify under clause 10.7 shall include the provision of further information to the Authority in phases, as details become available.

10.9. Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause 10.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

a. the Authority with full details and copies of the complaint, communication or request;

b. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

c. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

d. assistance as requested by the Authority following any Data Loss Event;

e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

10.10. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 10. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

a. the Authority determines that the processing is not occasional;

b. the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

c. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

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

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

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

a. notify the Authority in writing of the intended Sub-processor and processing;

b. obtain the written consent of the Authority; and

c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 10 such that they apply to the Sub-processor; and.

d. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

10.15. The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

10.16. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

10.17. This clause 10 shall apply during the Contract Term and indefinitely after its expiry.

11. Freedom of Information

11.1. The Supplier acknowledges that the Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the "Information Acts") and may be required to disclose certain information to third parties including information relating to this Contract pursuant to the Information Acts.

11.2. If the Authority receives a request for information relating to the Contract pursuant to either of the Information Acts, the Authority may disclose such information as necessary in order to comply with its duties under the Information Acts.

12. Intellectual Property Rights

12.1 The IP Materials shall vest in the Authority and the Supplier shall not, and shall procure that Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for the Supplier to provide the Services.

12.2 The Supplier shall indemnify and keep indemnified the Authority and the Crown against all actions, claims, demands, losses, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur arising from any infringement or alleged infringement of any Intellectual Property Rights by the availability of the Services except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

13. Prevention of Corruption and Fraud

13.1. The Supplier shall act within the provisions of the Bribery Act 2010.

13.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of money from the Authority.

13.3. The Supplier shall notify the Authority immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

14. Discrimination

14.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

14.2 The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

15. Environmental and Ethical Policies

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

16. Health and Safety

16.1 Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.

16.2 While on the Authority's premises, the Supplier shall comply with the Authority's health and safety policies.

16.3 The Supplier shall notify the Authority immediately if any incident occurs in providing the Services on the Authority's premises which causes or may cause personal injury.

16.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974, and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's premises when providing the Services.

16.5 The Supplier's health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) shall be made available to the Authority on request.

17. Monitoring and Audit

17.1 The Authority may monitor the provision of the Services and the Supplier shall co-operate, and shall procure that Staff and any Sub-contractors co-operate, with the Authority in carrying out the monitoring at no additional charge to the Authority.

17.2 The Supplier shall keep and maintain until 6 years after the end of the Contract Term full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall allow the Authority, the National Audit Office and the Comptroller and Auditor General reasonable access to those records and on such terms as they may request.

17.3 The Supplier agrees to provide, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

18. Transfer and Sub-Contracting

18.1 The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval.

18.2 If the Supplier enters into any Sub-contract in connection with the Contract it shall:

a) remain responsible to the Authority for the performance of its obligations under the Contract;

b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;

c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;

d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.

18.3 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

a) any Contracting Authority or any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

b) any private sector body which performs substantially any of the functions of the Authority.

18.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.

19. Variation

19.1 Subject to the provisions of this Clause 19, the Authority may change the Specification provided that such change is not a material change to the Specification (a "Variation").

19.2 The Authority may request a Variation by notifying the Supplier with sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement it. Variations agreed by the Parties shall be made in writing.

19.3 If the Supplier is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

a) allow the Supplier to fulfil its obligations under the Contract without the Variation; or

b) refer the request to be dealt with under the Dispute Resolution Procedure.

20. Dispute Resolution

20.1 The Parties shall attempt in good faith to resolve any dispute between them arising out of the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall include the escalation of the dispute to the Supplier's representative and the Authority's commercial director or equivalent.

20.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

20.3 If the dispute cannot be resolved by the Parties pursuant to Clause 20.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clauses 20.5 to 20.10.

20.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.

20.5 A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree a Mediator within 10 Working Days after a request by one Party or if the chosen Mediator is unable to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

20.6 The Parties shall, within 10 Working Days of the appointment of the Mediator, meet the Mediator to agree a programme for the disclosure of information and the structure to be adopted for negotiations. The Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

20.7 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

20.8 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

20.9 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

20.10 If the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to the Courts.

20.11 Subject to Clause 20.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 20.1 and 20.5 to 20.10 have been completed.

21. Supplier's Status

21.1 Nothing in the Contract shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent for the other for any purposes except as specified by the terms of the Contract.

21.2 The Supplier shall not (and shall ensure that Staff shall not) say or do anything that might lead any person to believe that the Supplier is acting as the agent, partner or employee of the Authority.

22. Notices

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

23. Entire Agreement

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

24. Third Party Rights

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

25. Waiver

25.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

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

25.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

26. Publicity

26.1 The Supplier shall not without Approval:

a) make any press announcements or publicise the Contract or its contents in any way; or

b) use the Authority's name or logo in any promotion or marketing or announcement.

26.2 The Authority may publish the Contract on the Authority Website or another website at its discretion.

27. Force Majeure

27.1 Except to the extent that the Supplier has not complied with any business continuity plan agreed with the Authority, neither Party shall be liable for any failure to perform its obligations under the Contract if, and to the extent, that the failure is caused by act of God, war, riots, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding any industrial dispute relating to the Supplier, Staff or Sub-contractors.

27.2 If there is an event of Force Majeure, the affected Party shall use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

28. Governing Law and Jurisdiction

28.1 The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales.

28.2 The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

29. Electronic Signature

29.1 Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000.

29.2 The Contract is formed on the date on which the Supplier communicates acceptance on the Authority's electronic contract management system.

29.3 No other form of acknowledgement will be accepted.

30. Precedence

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

a) the special terms below;

b) the main terms of the Contract (pages 1 to 15);

c) any other document referred to in the Agreement

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

SCHEDULE 1 - SPECIFICATION OF SERVICES

Assessment of the regulation system for water voles

1. Background

The Natural Capital & Ecosystem Assessment (NCEA) will deliver high quality national and local evidence to assess the state and condition of biodiversity, ecosystems, and natural capital assets across our terrestrial and freshwater environments. It will gather vital, accurate and up to date information to measure ecosystems, their condition and how these are changing over time to help ensure that the value of natural capital is fully considered in decision making across national and local government and in the private sector.

This year the NCEA will fund the development of the evidence base which is a prerequisite to producing strategic approaches to species conservation for species that are subject to legal protection, starting with developing an evidence base for water vole.

Water vole (*Arvicola amphibius*) numbers and distribution nationally have declined sharply over recent decades due to habitat destruction, fragmentation and change with intensification of agriculture, exacerbated by predation by introduced American mink (*Neovison vison*). The second national water vole survey (1996-98) reported an 89% loss of water voles from sites where they had previously been recorded in 1989-90. Population loss was greater than 90%. The National Water Vole Database and Mapping Project reported a further 30% decline in the water vole population between 2006 and 2015 in England and Wales which has resulted in the species being listed as endangered in Britain. These declines have led to the water vole being given partial and then full legal protection in 1998 and 2008 respectively.

Where an activity – including any steps to mitigate or compensate for impacts - is expected to infringe the legal protection afforded to water voles then it is necessary to rely on a legal defence or to obtain a licence for the activity to proceed legally. The majority of licences issued to permit development or water course maintenance work are issued under the purpose of 'conservation'. This is because there is no provision to licence for the purpose of development under the Wildlife and Countryside Act 1981. Although 'conservation' doesn't necessarily need to apply to water voles, in reality most licences issued to affect water voles do. The agreed best practice outlined in the Water Vole Conservation Handbook ('conservation handbook' Strachan *et al* 2011[1]) and Water Vole Mitigation Handbook ('mitigation handbook' Dean *et al* 2016[2]) is used to either avoid or mitigate harm to water voles in these situations. Conventional approaches to these conflicts explained in these handbooks typically focus on protecting individual animals from harm through displacement or trapping. Although

[1] Strachan, R., Moorhouse, T. and Gelling, M. (2011) Water Vole Conservation Handbook. Third Edition. Wildlife Conservation Research Unit, Oxford.

[2] Dean, M., Strachan, R., Gow, D. and Andrews, R. (2016) The Water Vole Mitigation Handbook (Mammal Society Mitigation Guidance Series). Eds Fiona Mathews and Paul Chanin. Mammal Society, London.

this is an important consideration, from a conservation perspective such approaches may not always lead to the best outcomes for water vole populations at a site or locally.

There are provisions in the Environment Bill to enable Natural England to prepare and publish Species Conservation Strategies (SCS) and to apply these to the way in which it implements regulation. The Bill also contains a provision for Natural England to issue licences under the Wildlife and Countryside Act for reasons of overriding public interest. If these provisions pass into law it will mean that:

- There will be greater flexibility to focus regulatory requirements on the measures and locations which will have the greatest effect in protecting and improving the conservation status of species protected under the Wildlife and Countryside Act including water vole, where these are set out in a SCS
- SCS will define strategy for geographical areas at a scale which maximises their usefulness for species conservation. These could match counties, or regions, or natural character areas or catchments, or other geographies.
- Whilst it will be necessary for SCS to reflect the mitigation hierarchy, SCS will be able to consider the mitigation hierarchy in terms of the impact on conservation status rather than in terms of the likelihood and severity of offences.

In the light of the changes which may be put in place by the Bill, this project will investigate how different site/local and strategic measures may best be combined to maximise the positive effect of regulation on the conservation status of water vole in in England.

Natural England has recently facilitated discussion with a range of experts in water vole conservation. These discussions have shown a strong consensus that the greatest pressures on the conservation status of water vole are mink predation and habitat deterioration. Thus, we would expect an SCS to focus largely on addressing these factors. It is anticipated accordingly that the regulatory component of a SCS could enable a shift in regulation from securing site-specific measures towards instead securing strategic measures of mink control or habitat improvement, where this would enable greater conservation benefit.

Following the recent discussions with experts, we have concluded that it would be appropriate to focus a pilot SCS for water vole at a regional level, because this geographic scale is likely to maximise the effectiveness of mink control. Also, it will allow a pilot to encompass a wide range of circumstances for the species (such as strongholds and areas of decline), which will enable us to test the ability of a SCS to target measures to maximise conservation effect. The pilot region which has been selected is made up of the three east Anglian counties of Norfolk, Suffolk and Essex. This region has been selected because it is thought to have relatively good existing data and it has an established partnership for mink control.

This is one of four water vole projects which will be undertaken this year within the pilot region. These are:

(1) preparation of a mink control strategy

(2) preparation of a habitat management strategy

(3) baseline evidence development, including; distribution modelling; estimating current status in terms of range, population and distribution in the three counties; identifying strongholds and target areas for action

(4) preparation of a regulatory strategy (this project).

It is anticipated that the outputs of these projects will bring together recommendations for future improvements, and these will be joined into a unified strategy, a SCS, in the next financial year (April 2022-March 2023)[3]

2. Requirement and Objectives

The objective of this project is to prepare options for an improved regulatory strategy, which may include forming part of a SCS for the water vole in Norfolk, Suffolk and Essex.

This project will investigate the regulation system, including management, planning and licensing systems and all steps of the regulatory process within these systems. It is anticipated that the new flexibility offered by the Environment Bill will enable a shift in the balance of investment.

The following work is required:

1) An evaluation of the current regulatory system for water voles in the three counties, in terms of its effectiveness in securing avoidance, mitigation and compensation and in focussing these measures on the conservation priorities for the species. This evaluation will include but not necessarily be limited to the following:
   a) An inventory of the measures secured for water vole by a representative sample of planning authorities and an assessment of the likely cumulative scale of these measures across the three counties over a given timescale. As a minimum the sample will be one local planning authority in each county and one county council.
   b) An inventory of the measures secured by the licensing system in the three counties and an assessment of the likely cumulative scale of these measures across the three counties (or elsewhere if applicable to a specific licence) over a given timescale. Natural England will provide a copy of all the water vole licences granted in the last five years in the three counties.
   c) An inventory of the measures secured by the drainage authorities and land managers in a representative set of catchments and an assessment of the likely cumulative scale of these measures across the three counties over a given timescale.
   d) An investigation and description of the measures which professional ecologists, their clients, and land mangers put in place for water vole to ensure compliance with the regulatory system and an assessment of the likely cumulative scale of these measures across the three counties over a given

[3] The reports from these parallel projects will be provided to the contractor. Timing to be confirmed

timescale. This investigation will gather data through interviews with consultants and programme managers working across the range of sectors which have most effect on the aquatic environment. It is intended to reveal the range and scale of activity which occurs because of regulation, but which may not be visible or quantifiable through the inventories in a,b and c above.

e) An assessment of the potential or likely scale of benefit from each of the measures identified in terms of the range, population and distribution of water vole (the parameters of FCS) or, if more appropriate, in terms of the understanding of water vole conservation status.

2) Description of a set of options to improve the measures currently secured by the regulatory system. This should consider all potential improvements and not just strategic compensation ideas. For each option the contractor is required to: evaluate the benefits to water vole conservation status and benefits to stakeholders which would give them an incentive to deliver the improvements. Also the contractor must set out the particular benefits and risks arising from each option.

3) Description of how a strategic compensatory scheme could be operated within the regulatory system. The parallel projects on mink control and habitat improvement will define what compensatory action could consist of on the ground. It is anticipated that this action on the ground would be delivered by one or more strategic delivery bodies. This project will develop options for how proportionate contributions could be secured from those seeking regulatory permissions and where. For each option the contractor is required to: evaluate the benefits to water vole conservation status and benefits to stakeholders which would give them an incentive to participate in the scheme. Also the contractor must set out the particular benefits and risks arising from each option.

4) Development of a set of rules or criteria for determining when site or locally-specific measures should be used, which define when it is important for FCS to maintain population on site or locally, and when instead it is more beneficial for the regulator to secure compensatory measures elsewhere

5) Identification of any evidence or knowledge gaps which need to be addressed before the proposed options can be put in place. The contractor need not consider a monitoring strategy as part of this contract, as this will be considered as part of formulation of any new regulatory regime, including SCS.

6) Provision of reasoned recommendations on the different options that offer potentially better outcomes for water voles (both as part of SCS or improved local-based measures) to take into account benefits and risks, and interests of stakeholders. The options which should be recommended are those which offer greatest benefit to water vole conservation status, and offer benefits to other stakeholders in a way which will make them workable.

Methods

Items a to d above will be informed largely by engagement of stakeholders and by critical analysis of evidence which they put forward. Where the sample of stakeholders is not defined here, it is for those tendering to specify which

stakeholders they would engage and how, including the number, format and spacing of meetings.

Natural England seeks to build through this contract consensus on what regulatory improvements should be put in place. Therefore, tenders are required to specify how dialogue will be facilitated and stakeholder encouraged to develop options collaboratively.

3. Contract Management

3.1. Outputs

The contractor is asked to provide the options in the form of a concise report detailing the objectives 1-6 above and a description of the methods used. The report should be built using Microsoft Office software and, in a form, which can be readily edited by Natural England. Any detailed supporting information should be presented in annexes.

3.2. Timescale

Provisional dates for delivery of the contract outputs are set out below. Exact dates are to be agreed at start-up meeting based on Contractor and NE staff availability. Please note, due to the ongoing situation with COVID-19, it is anticipated that all meetings will be held remotely. Please state your preference of software for virtual meetings on your tender.

Milestones	Provisional dates
Start-up meeting	Week/commencing 25 October 2021
Submission of inventory of regulatory measures	14 January 2022
Draft Report	28 February 2022
Final Report – following comments of the draft report	24 March 2022

3.3. Contract management meetings

Monthly 2 hours meetings to start 2 weeks after contract start date (week commencing the 25 October 2021)

4. Payment

Payment will be made on delivery of final report, following the submission of invoices and based on satisfactory undertaking of the contractual elements to the agreed standard of the Natural England Project Officers.

[redacted]

[redacted]

SCHEDULE 2 - PRICES

Total excluding vat £21,888

[redacted]

SCHEDULE 3 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

2. The contact details of the Authority Data Protection Officer are:

[redacted]

3. The contact details of the Supplier Data Protection Officer are:

[redacted]

4. The Supplier shall comply with any further written instructions with respect to processing by the Authority.

5. Any such further instructions shall be incorporated into this Schedule.

Data Processing Descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor in accordance with Clause 10.3.
Subject matter of the processing	The processing of data is needed to ensure the Supplier can fulfil its contractual duties and deliver the services to Natural England required.
Duration of the processing	For the duration of the contract.
Nature and purposes of the processing	The nature of the processing will be in accordance with and to facilitate the delivery of the contact.
Type of Personal Data	N/A
Categories of Data Subject	No personal data.
Plan for return and destruction of the data once the processing is complete **UNLESS requirement under union or member state law to preserve that type of data**	The Supplier will retain data for the minimum required time. The timing to return or destroy any data will depend on the contract or permitted reason for entering into the relationship and would be in accordance with the Supplier's project plan. This is likely to be a maximum of three or six months from the completion or termination of any contract or permitted reason. Data will be destroyed in line with the terms of the Contract.