



Department
for Environment
Food & Rural Affairs

Short Form Contract

Contract for Building the Evidence Base for Proposed Extended Producer Responsibility Schemes for Two Waste Streams Identified in the Resource & Waste Strategy

Contract Reference itt_5687

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1. Interpretation

1.1 In these terms and conditions:

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

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

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

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

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

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

2. Basis of Agreement

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

3. Supply of Services

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

4. Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

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

- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.7.1 provisions having the same effects as clauses 5.3 to 5.6 of this Agreement; and
- 5.7.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.7 of this Agreement.
- 5.8 In this clause 5.8, “sub-contract” means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and equipment

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

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

7. Staff and Key Personnel

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

- 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8. Assignment and sub-contracting

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

9. Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Customer:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- a. any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
 - b. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use

of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

10. Governance and Records

10.1. The Contractor shall:

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

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

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

11. Confidentiality, Transparency and Publicity

11.1. Subject to clause 11.2, each Party shall:

11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

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

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

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

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

11.2.3. on a confidential basis, to its professional advisers;

- 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and
- 11.2.6. where the receiving Party is the Customer:
- a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - d) in accordance with clause 12.

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

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

12. Freedom of Information

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13. Protection of Personal Data and Security of Data

- 13.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 1. The only processing that the Contractor is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.

- 13.2. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 13.3. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- a. a systematic description of the envisaged processing operations and the purpose of the processing;
 - b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 13.4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a. process that Personal Data only in accordance with Schedule 1 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - b. ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer 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 Agreement (and in particular Schedule 1);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 1. are aware of and comply with the Contractor's duties under this clause;

2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d. not transfer Personal Data outside of the European Union unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- i. the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Customer;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

13.5. Subject to clause 13.6 the Contractor shall notify the Customer immediately if, in relation to any Personal Data processed in connection with its obligations under this Agreement, 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.
- 13.6. The Contractor's obligation to notify under clause 13.5 shall include the provision of further information to the Customer in phases, as details become available.
- 13.7. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Agreement and any complaint, communication or request made under Clause 13.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- a. the Customer with full details and copies of the complaint, communication or request;
 - b. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - c. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Customer following any Data Loss Event;
 - e. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 13.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 13. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- a. the Customer determines that the processing is not occasional;
 - b. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - c. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9. The Contractor shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.

- 13.10. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 13.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a. notify the Customer in writing of the intended Sub-processor and processing;
 - b. obtain the written consent of the Customer;
 - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
 - d. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 13.12. The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13. The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.14. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 13.15. When handling Customer data (whether or not Personal Data), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.
- 13.16. This clause 13 shall apply during the Term and indefinitely after its expiry.
- 13.17. [Where the Parties include two or more Joint Controllers as identified in Schedule 1, in accordance with GDPR Article 26 those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [X] in replacement of Clauses 13.1 to 13.14 for the Personal Data in respect of which they are Joint Controllers.]

14. Liability

- 14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
- 14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and
- 14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Contractor be liable to the Customer for any:
- a) loss of profits;
 - b) loss of business;
 - c) loss of revenue;
 - d) loss of or damage to goodwill;
 - e) loss of savings (whether anticipated or otherwise); and/or
 - f) any indirect, special or consequential loss or damage.
- 14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 14.3.1 death or personal injury caused by its negligence or that of its Staff;
- 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.3.3 any other matter which, by law, may not be excluded or limited.
- 14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

15. Force Majeure

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

16. Termination

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:
- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
 - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
 - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or

- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Contractor shall:
 - 16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and
 - 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17. Compliance

- 17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.
- 17.2 The Contractor shall:
 - 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Contractor shall:

- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.
- 17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
 - 17.5.1 the Official Secrets Acts 1911 to 1989; and
 - 17.5.2 section 182 of the Finance Act 1989.

18. Prevention of Fraud and Corruption

- 18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
 - 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

19. Dispute Resolution

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

20. General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21. Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22. Governing Law and Jurisdiction

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

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<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>

Specification of Services

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

Specification of Requirements

This section sets out the Authorities requirements.

Aim

The aim of this project is to equip The Department for Environment, Food and Rural Affairs (Defra) with the information required to prepare and consult on options, including the use of Extended Producer Responsibility (EPR), for tackling environmental issues associated with specific products which fall under the broad headings of bulky waste and certain materials in the construction and demolition sector. EPR is a policy approach in which producers are obligated to take financial or practical responsibility for the entire lifecycle of their products, including the post-use stage.

Scope

Defra recently published a Resources and Waste Strategy, committing to consulting on, reforming and reviewing existing producer responsibility regulations. It also commits to reviewing and consulting on potential policy measures, including EPR for textiles, bulky wastes, certain materials in the construction and demolition sector, vehicle tyres and fishing gear. This project will help take forward this latter commitment for two of the waste streams; bulky waste and certain materials in the construction and demolition sector. Tyres, textiles, fishing gear and 'white goods', such as refrigerators and washing machines are out of the scope for this project.

In order to consult with other Government departments and Defra stakeholders on potential policy changes, Defra need to understand more about the impacts of bulky waste and materials in the construction and demolition sector, and the options for tackling them. This research will bring together existing evidence to build up an accessible set of numerical and narrative profiles for products that might be subject to EPR. It will look at developing a set of criteria against which available policy measures, including EPR, can be assessed. This will enable Defra to design possible schemes and draw up options on which to consult.

Background

Products such as furniture, mattresses, carpets and construction materials impact on the environment in a range of ways during their production, their use and their disposal at end of life. There is in theory at least, potential for more reuse, repair and remanufacture and more recycling of component materials. There is also scope for designing products in a way that minimises impact. For example, by designing out any chemicals that make products harder to recycle, by rethinking which materials should be used and by ensuring that waste is reduced during production.

There are several different types of policy instruments available to tackle the adverse impacts of products. At a broad level they include **command and control** (regulatory) measures, **economic** measures such as subsidies, taxes and charges, and **communicative, persuasive** measures such as consumer campaigns or labelling.

One policy instrument that has been advocated for tackling the adverse impacts of products, particularly at end of life, is Extended Producer Responsibility (EPR). EPR is a policy approach in which producers are obligated to take financial or practical responsibility for the entire lifecycle of their products, in line with the 'polluter pays' principle. The 'Polluter pays' principle refers to the practice that those who produce pollution should cover the costs of the damage caused to the environment and thus producers are financially incentivised to design products in a more sustainable manner.

Objectives

The specific objectives are to:

1. Develop a 'longlist' of at least 10 products within each of the two broad categories (bulky waste and certain materials in the construction and demolition sector), that could be subject to EPR or other measures. In total there should be a minimum of 20 products on the 'longlist'. For bulky waste this must include, mattresses, carpets and underlay and certain types of furniture.
2. For each product, provide quantitative and qualitative insight into:
 - a. Products placed on the market in the UK, with estimated tonnages, including those manufactured domestically and those imported;
 - b. How these products are used, including the nature and length of their active life, the nature of the product 'owners', the balance of use between domestic and commercial settings, and any other matters considered of relevance to designing an EPR scheme;
 - c. The nature of domestic and international reuse, repair, remanufacturing and recycling markets for each product, including estimated recycling, reuse and energy recovery rates as relevant;
 - d. Trends in sales, use, reuse, repair, remanufacturing, recycling and disposal, including an assessment of the likely future situation;
 - e. The environmental, social and economic issues posed by a lack of producer responsibility, including carbon impacts, leakages into the environment, and illegal waste exports and operations;

- f. The costs of managing them as wastes, including transport, treatment and disposal costs.
3. Develop criteria, which can be used for this and other projects, for assessing the suitability of the products to be tackled through different policy instruments, including:
 - a. Market-based EPR ;
 - b. Government-run or centrally managed EPR;
 - c. Other economic instruments such as subsidies, taxes and charges;
 - d. Statutory command and control (regulatory) instruments;
 - e. Voluntary agreements and commitments;
 - f. Communicative/persuasive approaches;
 - g. Other policy instruments.
4. From the 'longlist', recommend a 'shortlist' of products that would best be included in each of the potential EPR schemes, (bulky waste and certain materials in the construction and demolition sector) and justify your recommendations using the evidence gathered. Make suggestions as to which are 'kindred' products, i.e. products that could be tackled together within a single EPR scheme/policy instrument on the basis that similar intervention, monitoring and governance mechanisms would be effective.

When delivering the project, the supplier will bear in mind Defra's intention to initiate potential future projects that will take the results of this research further by answering some of the following questions. These questions are **not within the scope** of this specific research project:

- **Design Considerations**
What are the detailed policy design options for each set of kindred products? For example, if EPR is deemed to be the most appropriate tool, would the incentive mechanisms work at the point of design or manufacture? Are there other policy measures that should be introduced alongside an EPR scheme to help achieve desired outcomes?
- **Impacts**
What would the increase in recycling rates and/or landfill diversion be? What would the carbon savings be?
- **Cost and Value for Money**
How much would it cost to implement each of the design options within each product set? Given the estimated waste management costs, to what extent would the chosen policy approach represent good value for money for this product type? Particularly, is the approach being conducted in a cost effective manner? E.g. is the maximum value achieved, including environmental value where possible at the lowest costs to producers?

To reiterate, these questions above are not in scope for this research project. The questions are to help suppliers appreciate the bigger picture for this project.

Expertise

The successful supplier will be able to undertake a market-based analytical assessment and demonstrate an understanding of the ways in which policy instruments operate and can be designed. In addition, the team of researchers should have market knowledge of the products to be included and understanding of the relevant secondary markets for second-hand products/recycled materials. The successful supplier must have the ability to resource the data and insight gathering phase in accordance with the deliverables and timetable.

Methods

Defra expect that the research will be largely desk-based, supplemented by interviews with trade bodies, experts or others as required. Suppliers should clearly set out the methods they propose to adopt to meet each of the objectives.

Defra appreciate that there will be uncertainty associated with some of the market data, and it may not be possible to obtain reliable responses to all the objectives listed, for every product considered. Suppliers should follow government guidance, contained in the AQUA book¹, where there is uncertainty over quantitative data or where spreadsheets are used.

Linked to the objectives set out above, the research should take place in three stages:

1. Develop the longlist of products within the categories of bulky waste and certain materials in the construction and demolition sector. At least 10 products should be included in each category and thus the longlist will include at least 20 products;
2. Gather data and insight on each of the products;
3. Refine the product list by developing criteria for their inclusion in a scheme and assessing each product against those criteria.

Longlist

This phase of the work will develop a longlist of products within each of the two broad categories that could potentially be the target for government policy intervention and about which further research would be needed. By product, we mean items such as mattresses, carpets and uPVC window frames.

Defra expects this process to be largely desk-based, drawing on expertise within the project team and on existing research about each of the broad product types. Defra has carried out research into some of these products and summaries, that can be found on Defra's Science and Research Projects site². Suppliers should identify other sources of evidence to be used as part of this phase of research in their RFQ submission.

A summary paper setting out the longlist and the rationale for each product's inclusion on it, should be prepared and discussed with Defra (see "Deliverable 1" below).

Data and Insight Gathering

Defra require a summary of the following for each product, in line with the objectives set out above:

¹ <https://www.gov.uk/government/publications/the-aqua-book-guidance-on-producing-quality-analysis-for-government>

² <http://randd.defra.gov.uk/Default.aspx?Location=None&Module=FilterSearchNewLook&Completed=0>

1. Current market situation and how this has changed over the past 10 years;
2. Summary of ways in which the product is used, by whom and for how long and how this has changed over the past 10 years;
3. Current nature and scale of reuse, repair, remanufacture, recycling and disposal and how this has changed over the past 10 years;
4. Issues associated with the product, focusing on environmental but also social and economic and how these have changed over the past 10 years;
5. A 10-20 year forecast of future trends.

We expect this phase of research to be largely desk-based, drawing on a wide range of literature and data sets, as appropriate to the question.

Where feasible, the project is looking for a quantitative assessment and the supplier should state clearly for each objective and for each product, whether they expect a quantitative assessment to be possible.

The supplier will develop and agree with Defra, a set of headings under which the results will be presented.

The results for each product will be presented in the form of a 'product profile'. Each product profile will include detail that will ensure the requirements set out in the objectives section are met.

The profiles should be shared with Defra for sign off prior to the deadline for this stage of the research as set out in Deliverable 2 below.

Developing the Criteria for Shortlisting

A series of criteria against which the products will be assessed for suitability for addressing through EPR or other measures should be developed. The criteria should be developed in parallel with the data and insight gathering. Criteria might include, for example, extent of environmental impact, feasibility of targeting the product at end of life and reliability of recycling markets.

Once the criteria have been determined, these should be shared with Defra for sign-off prior to the deadline for this stage of the research as set out in Deliverable 3 below.

Shortlist

After Defra has signed-off the criteria for shortlisting (see above section), each product will then be assessed against the criteria and a shortlist of products suitable for EPR or other measures produced (see Deliverable 4 below).

Audience

The final report will be used by a mixture of analytical and policy professionals within Defra and or other Government departments. Defra recommend separating most of the technical details relating to the methodology into a technical annex, with the main report addressing the questions in the 'objectives' section above.

Deliverables and Timetable

<p><i>Inception Meeting</i></p>	<p>Inception meeting with the project steering group and supplier. Following the meeting, brief notes of the inception meeting should be submitted to Defra.</p>	<p>w/c 5th August 2019</p>
<p><i>Progress updates</i></p>	<p>Fortnightly teleconference/phone call to update the Defra Project Officer on progress, with steering group participation if required technically. E-mail update on progress to be provided to the Defra Project Officer 24 hours before each fortnightly teleconference.</p>	<p>Fortnightly or as issues arise</p>
<p>Deliverable 1 <i>Longlist</i></p>	<p>Supplier to prepare a summary paper setting out the longlist and the rationale for each product's inclusion on it.</p>	<p>w/c 26th August 2019</p>
<p>Deliverable 2 <i>Completion of the data and insight gathering phase</i></p>	<p>Supplier to present for each product on the longlist a 'product profile'. These are to be shared with Defra.</p>	<p>w/c 7th October 2019</p>
<p>Deliverable 3 <i>Criteria for shortlisting</i></p>	<p>Supplier to determine criteria for shortlisting, against which the products in the longlist will be assessed for suitability for addressing through EPR or other measures. These are to be shared with Defra.</p>	<p>w/c 4th November 2019</p>
<p>Deliverable 4 <i>Shortlist</i></p>	<p>Supplier to assess each product on the longlist against the criteria for shortlisting and produce a shortlist of products suitable for EPR or other measures.</p>	<p>w/c 2nd December 2019</p>

<p>Deliverable 5</p> <p><i>Presentation of the draft report to DEFRA</i></p>	<p>Supplier to present a draft report to Defra.</p>	<p>w/c 13th January 2020</p>
<p>Deliverable 6</p> <p><i>Final Report and Presentation</i></p>	<p>Supplier to submit final report to Defra and present the findings.</p>	<p>By 24th January 2020</p>

Financial Arrangement: The Supplier will be paid by two separate invoices; one following satisfactory completion of deliverable 2 and the other on satisfactory completion of deliverable 6 as set out above.

Building Research Establishment Limited Responses

E01 - Understanding of the specification of requirements

Understanding of producer responsibility objectives and concept of ‘full net cost recovery’

The broad aim of ‘polluter pays’ interventions, such as EPR, is to shift the full net cost of EoL treatment from the public sector to the private sector (producers) and, by doing so, provide the producers with a financial incentive to prevent waste and tackle other adverse impacts of their products. Already some cash-strapped Local Authorities are passing an increasing proportion of the cost of bulky waste disposal and recycling onto households and businesses, with charges for using Household Waste Recycling Sites (HWRC) being introduced on top of the fees charged for kerbside collection of bulky waste, with potential knock-on effects on flytipping rates. In practice, EPR schemes vary in scope and implementation but generally target recycling through the development of the recovery infrastructure and markets for recovered materials, through financial incentives. In the UK for producers of packaging, WEEE, batteries and ELVs subsidise the collection and recovery of EoL products, as well as ensuring products comply with certain product design and labelling regulations. In terms of net cost recovery, e.g. the cost of collection, transport, treatment and communication associated with the recovery of a product or materials placed on the market, the WEEE, battery and ELV EPR schemes perform much better than that for packaging, where only an estimated 10-20% of the net costs are covered by the scheme. The UK’s existing EPR schemes were introduced as a result of EU Directives aimed at increasing recycling rates, using a weight-based approach that has been criticised for perverse outcomes such as incentivising material recovery (recycling) above product recovery (remanufacturing and reuse). DEFRA’s focus on full net cost recovery, which supports consideration of a fee modulated approach based on the recyclability of the material as well as a weight and unit based approach to EoL product management, is in line with the EU’s Circular Economy Package and the more holistic approach to addressing environmental impacts across the whole value chain, it is designed to stimulate.

An understanding of different types of EPR systems

EPR, in which we include any policy approach where producers are directly given significant responsibility for the treatment or disposal of their products at EoL, can be voluntary or mandatory, centrally managed or managed by an industry affiliated or independent operator. EPR systems can also be applied uniformly across a whole product group, e.g. the WEEE Directive obligates producers according to the weight of EEE they put onto the market. Alternatively, modulated EPR can differentiate between products based on different product attributes, such as durability, reparability and recyclability. For example, the Eco Modulation Criteria introduced as part of the French EPR scheme for new furniture in 2016, where a lower levy is charged to manufacturers when they meet specific environmental product criteria. e.g. scalability to reduce waste or recyclability such as certified solid wood). Additionally, although it is common practice in EPR policy for the producers to fund the scheme, there are examples where they have the obligation to collect and recycle the products they place on the market, for example, the Home Appliance Recycling Act in Japan obligates the manufacturers in this way and the consumers pay a fee for both the collection and recycling of WEEE.

Alternatives to EPR, how different materials are suited to different systems

Economic instruments, regulatory instruments and communicative/persuasive approaches can either be a part of an EPR scheme or be implemented as stand-alone policy interventions. There are also non-policy approaches, sometimes referred to as Product Stewardship where producers, often joined with stakeholders from other parts of the value chain, voluntarily address the negative impact of their products. Improving a product's environmental impact can also be achieved by increasing the market pull for 'better' products through green public and private procurement policies. This can involve the use of third-party accreditation schemes such as BREEAM and EPD's for construction products and furniture for commercial settings. Other intervention examples include:

- Other market-based instruments - such as the landfill tax and the Aggregates Levy
- Direct regulation - such as the Hazardous waste regulation and landfill bans (e.g. restriction of plasterboard waste in landfills unless in monocells)
- Technology investment programmes - such as investment grants and subsidies
- Quality criteria & standards e.g. Quality Protocol for aggregates, EcoDesign and EcoLabels
- Raw material policies - examples include the Raw Material strategy in Germany that sets targets for the use of synthetic (e.g. FGD) gypsum in place of primary gypsum

Broadly speaking, the construction and bulky waste products included in the remit of this research incur a net cost at their EoL, i.e. their collection, transportation and disposal or treatment cost more than the revenue generated from the sale of any recovered materials. In some cases, the inherent low marketability (and hence value) of the products' constituent materials or components is a key factor though the typically poor or non-segregation of materials and products at EoL also contributes. They're also generally products with medium (5-15 year) to long (15 year +) in use lifetimes and can have high functionality requirements for this life cycle stage. Despite the common characteristics of these products a case-by-case approach is still warranted due to differences in the product design / material composition, product ownership and use profiles (household or commercial), opportunities for value retention at EoL and scope for eco-design. The supply chain involved in producing, distributing and using the products, also needs to be taken account of. This will support in the identification of opportunities to leverage existing networks, initiatives and administrative structures, as well as highlighting barriers to the implementation of any interventions. For example, the market share of UK production, and the proportion accounted by SMEs, will impact which interventions will be effective and implementable. Any interventions to align with the overarching policy framework should also reflect the reality of the product value chain, e.g. should tackle the specific environmental hotspots within a product value chain and the associated 'market failures'. This is reflected in the approach proposed for this research, e.g. to consider both the market and policy attributes independently before aligning the priority products to the policy and other interventions that best address these.

Knowledge and understanding of policy implementation and the role of analysis and insight

Balancing potentially conflicting considerations and avoiding unintended consequences is an important goal of policy implementation, which needs to be developed through a current and unbiased evidence base, supported by transparent, comprehensive analysis. Investigation of the 'fairness' of the policy, by considering the direct financial burden of the policy and the means by which revenue from the policy is to be redistributed to achieve revenue neutrality is important. 'Fairness' can be measured in terms of the 'equality' of the policy burden across all stakeholders and the 'equity' of the policy burden with respect to the impact on low income groups, such as SMEs.

Awareness of the challenges of waste management policy-making

Key challenges in the development of waste management policy include the need for effective enforcement to reduce waste crime and poor-quality data and the issue of 'administrative burden', in terms of the cost and time incurred in managing waste. For example, for EPR, although a modulated EPR scheme provides greater incentive for manufacturers to adopt an 'eco-design' approach, the 'administrative burden' of managing this scheme is much greater than a pooled scheme, where all manufacturers pay a fee on the bases of market share. Other challenges for EPR include addressing the start-up costs of any initiative, including industry buy-ins; ensuring that the EoL treatment of products moves up the waste hierarchy, without any unintended regressive consequences; and, with the medium and long lived products in scope, addressing the considerable lag there'll be in realising the EoL benefits of any design or technical improvements to the products and the possibility that the original producer may no longer be around.

Understanding of current issues in the policy remit of DEFRA

With the UK leaving the EU, DEFRA is in a position of being able to develop its own ambitious resource and waste management policies rather than adopting a 'compliance management' strategy. The Government's objectives, as set out in its recent Strategy, e.g. to maximise the value of resource use and minimise waste and its environmental impact, require a reworking of the existing policy framework and targets waste. Unrestricted by the EU recycling target centric approach, the UK can go further by applying a system thinking approach to the products under consideration here, and consider material intensity, carbon impact, designing out waste as opposed to material recovery at EoL. This will necessitate a balance between environmental ambitions and ensuring the UK remains competitive in terms of trade in foreign markets and the UK economy prospering in terms of jobs and growth. Critically, any policy reforms should also streamline and increase coherence, working with the Devolved Administrations, in overall policy provision in this area.

E02 – Methodology

Our understanding of the requirements

The aim of this project is to develop the evidence base for the potential implementation of an EPR scheme in the UK for selected bulky wastes and construction materials. This will enable Defra to consult on potential policy changes. Key questions to be answered are:

- What are the environmental impacts associated with selected bulky & construction wastes?
- What are the market structure and trends for each of the selected products?
- What are the market failures of these products and which policies/measures could tackle them?
- What are the most appropriate measures for each product?

It is noted, that it is Defra's intention to initiate future projects, which will look at design issues, impacts from an EPR or similar scheme and the cost and value for money aspects. As such, these points are not in scope, however it is appreciated that evidence generated from this project may also assist in these future projects. The five-task methodology detailed below is tailored accordingly.

Task 1: Development of a longlist of 20 products to be considered

The aim of this task is to create a longlist of products that are suitable for further assessment. This task will be led by BRE (construction and demolition sector) and Oakdene Hollins (bulky waste) who have access to unique data and other datasets combined with a high level of knowledge of both sectors; as such we should be able to progress this task rapidly and robustly. We will create an initial longlist of at least 20 products, with at least 10 from each category: bulky waste and construction sector. We suggest a combination of the issues listed below should act as our rationale for inclusion:

- ✓ It has a low recovery level
- ✓ It has a medium/high environmental impact or related environmental 'hotspots' across its lifecycle
- ✓ The product is used widely and there are no or few viable alternatives
- ✓ The current or projected future waste generation is high
- ✓ For bulky waste, particularly, political/public concern could also feature (e.g. flytipping)

We will evaluate and build on the list Defra has provided (plasterboard, glass, paint, pipes, insulation, aggregates; and bulky waste: mattresses, carpet and underlay, furniture) by reviewing the following data sources (this list is not exhaustive):

- Recovery levels and waste generation – EA's Waste Data Interrogator, WasteDataFlow, Trade association reports (for examples see Task 2), BRE's SmartWaste data and BRE wastage rate data. We also have the option to survey NAWDO (National Association of Waste Disposal Officers) members on what items of bulky waste have the biggest impact on Local Authority (LA) collection operations.
- Environmental impact and hotspots – life cycle assessment data including Environmental Performance Declarations, material intensity figures, and data on the carbon impact wrt waste
- Product usage – Trade association reports, Prodcum, National building materials statistics



It should also be noted that there may be some crossover between the different areas, for example, carpet and underlay which is defined as bulky waste will be found in the construction and demolition waste stream. The summary paper (Deliverable 1) will include the following table, along with supporting text.

	Rationale					
Product	Low recovery level	Medium to high environmental impact	Environmental Hotspots	Widely used	High level of waste generated	Political and/or public concern
Mattress	✓	✓	Design (material selection) and EoL	✓	✓ Circa 180,000 tonnes in 2017	Fly tipping

Timescale: 5/8/19 (assuming a contract start date of 5th August) to 30/8/19;

Deliverable 1: Summary paper of the longlist with associated rationale

Task 2: Development of a ‘product profile’ for the agreed long list

Once the products on the long list have been agreed with Defra, based on the summary paper produced as part of Task 1 (D1), a ‘product profile’ template will be developed and agreed with Defra to be populated with relevant information for each product. To populate this template as per the requirements within the RfQ, we will seek data from a variety of sources, as per examples in the Table below. Trade associations and other stakeholders are an important source of data, particularly on market size and trends and as such we have already invited key stakeholders (as per the table below) on to an ‘expert panel’. We will use this panel to a) provide data or inform of data sources; b) help with any assumptions and uncertainties within the dataset; c) review the product profiles.

Product type	Key references/activities	
<i>Bulky waste general</i>	Policy statements and reports, member surveys, in-depth interviews, data and estimates on current and future trends in collection, recycling and reuse.	[Redacted]
Example: Carpets and Underlay	Overview of market, including material and construction methods, in-use consumption profile and design constraints. Recycling technology and infrastructure insight.	[Redacted]
Example: Furniture (general)	Producers associations to provide current market data, access to private reports and members, input into developing future trends. Recyclers to provide insight into practicalities of processing furniture derived materials.	[Redacted]
<i>Construction materials general</i>	EPDs, Ecolabels, PEF, CEN TS 350, BRE SmartWaste and wastage rate data, GPP criteria, REAP scoping reports, Constructing Excellence KPIs, Sector level reports	[Redacted]
Example: Insulation	Building insulation foam REAP, academic papers, environmental impact of insulation (BRE report), Defra Ozone Depleting Substances in insulation study	[Redacted]
Example: Aggregates	Aggregates Levy, Quality Protocol, BREEAM Recycled and Secondary Aggregate Credits, Standards, Mineral Panning Forecasts, WRAP environmental impact reports	[Redacted]

The robustness and the timescales of the data will vary and as such we propose a qualitative assessment of each sources' uncertainty (to be indicated as high, medium, low) and the implications of overall data robustness on future tasks. Where no or little data exists, which we anticipate will be the case for some products in both bulky and construction waste categories, we will work with the expert panel, to derive estimates with all assumptions explicitly recorded. We may also explore read-across (e.g. from international data) and scaling (e.g. from company to sector level) approaches if necessary, always presented transparently with a complete list of assumptions.

We will also engage with industry stakeholders, including those involved in the EoL collection and treatment, and intend to map them for each product. Any vested interests these parties may have will be noted and input from them framed with this context. In terms of the data required as per the RfQ, we will capture the levels (and suitability) for reuse, repair and remanufacturing for each product as well as an evaluation of ongoing efforts the various product sectors are taking to voluntarily reduce their environmental impact. For example, the plasterboard sector's Ashdown Agreement with Government with shared objectives for the diversion of waste from landfill and the National Bed Federation (representing >70% UK bed sector) taking a Product Stewardship approach including setting landfill diversion targets and developing a Register of Approved Mattress Recyclers. It will also be important to look at best practice examples for the products, both in terms of policy and EoL (BRE have much knowledge of this as referenced in EO3). Insight from international examples of best practice will also be sought, as appropriate.

Noting the medium to long in use lifetimes of the products in scope we expect to look at trends in consumption and waste generation going back at least 10 years. We will also look at trends in product composition and the impact of that at EoL. For example, lead plasticisers have been phased out of PVC in the last 15 years but will still be in many of the EoL window frames being discarded for the next 15-25 years. Pocket spring use in mattresses have also quadrupled in the last 15 years and are just starting to present considerable challenges to the mattress recycling sector. The presence of legacy chemicals and specifically POPs will be highlighted if present in any product EoL stream. Also important are the issues that are currently created from a lack of producer responsibility – which could be economic, social (e.g. nuisance, odour) or environmental (e.g. carbon, water and air pollution), leakage to the environment (fly tipping for example) and likelihood of illegal waste exports.

The profile will, where possible, contain a volume-based Sankey diagram (an example of this is in EO3 for mattresses) as well as sections covering the current and future market situation for both the new and EoL products and recoverable materials. We anticipate the product profile sections will closely follow the specifications of the RfQ, be approximately 6-8 pages long (exclusive of references), with key market and product and market also summarised in a matrix-type output at the end; an example is shown below.

Timescale: 2/9/19 to 10/10/19;
Deliverable 2: 20 product profiles completed

	Market size (sales £/tonnage)	Market share domestic commercial	Product costs	Market structure (i.e. SME dominated; import dependent)	Product design (materials/durability)	Environmental impact and hotspots
Current (2019)						
Future (2029)						

Task 3: Establishing the criteria for assessment against EPR and other measures

The purpose of this task is to develop a set of criteria with which to objectively assess the suitability of each policy instrument on each long-listed product. The task will be developed with key input from our three highly respected policy advisors on the team:

[Redacted]

[Redacted] Our

approach is twofold:

Policy criteria: We will develop a set of criteria, applicable across all longlisted products, on which to rate the different policy instruments. We will draw on the knowledge of the environmental impact and hotspots gained through Task 1 and the outputs of Task 2: i.e. information on the nature and scale of the products and existing initiatives targeting environmental impact and recovery. A full rationale for the inclusion of each criterion will be provided, as well as a summary of those we rejected and our reasoning behind these decisions. We expect that these criteria will include:

- Can the intervention be used to transfer 100% of the net recovery costs to producers?
- What is the extent of the intervention's environmental impact reduction?
- Does it directly or indirectly improve the EoL prospects for the product and, where applicable, support product value retention above material and energy recovery?
- Does it support improvements in the UK's resource productivity, from front-end interventions, such as design through to development of reprocessing infrastructure and recycle markets?
- Is it conducive to continual improvement programmes, whereby standards for environmental impact can be raised gradually over time?
- Does the intervention address any environmental, health and safety or chemical safety concerns (i.e. presence of persistent organic pollutants (POPs)) related to the EoL products?

With Defra's input we could rank these criteria, e.g. based on environmental priorities or public concern.

Policy profiles: We will then map out relevant policy and other interventions that could contribute to reducing the environmental impact of the longlisted products. We propose to consider all of the policy interventions included in the RfQ, as well as adding:

1. Green procurement policies, in both the public and private sectors, and to include contractual agreements involved in leasing products.
2. One-off financial support from Government to address significant barriers to improved resource productivity in the UK economy. Could include innovation funding, infrastructure development or other practical support to businesses.

We expect that further interventions will be forthcoming from the research conducted in Task 2, especially that related to international examples of best practice in the management of these products. We will produce a concise description of each intervention, supported by examples of where it is applied and its general strengths and weaknesses. We also appreciate that producer responsibility schemes are usually a combination of multiple policies interventions. For example, the battery EPR scheme includes a statutory command and control instrument to ensure producers clearly label where mercury and lead are used. It also requires battery distributors to provide and promote in-store collection services for used batteries. We also intend to consider EPR schemes where fees are modulated to incentivise certain behaviour, such as the durability and recycled content criteria introduced in France's textile EPR scheme which is, in effect, a combination of a centrally managed EPR scheme and an economic instrument. As such, we will make clear any dependencies of a particular policy on the associated policy framework. The output of this exercise will be a matrix of the policy criteria versus the various policy and other interventions under consideration.

Timescale: 14/10/19 to 8/11/19; **Deliverable 3:** Report on the criteria

Task 4: Assessment of the products to generate a shortlist

Once the criteria for short-listing (Deliverable 3) is agreed with Defra, each product will be assessed against each intervention type to match and create shortlists. We will look at identifying 'kindred' products by grouping those which are compatible with the same or similar interventions.

We also intend to explore whether any product or market characteristics correlate to the shortlisted policy or other interventions, and if these correlations could be used to predict the most suitable interventions for other products. Our approach would be to draw on the market analyses conducted in Task 2 to group products according to various attributes including: value when placed on the market, material value at EoL, sector structure, product complexity, ownership profile and typical EoL management options. We expect useful guidelines to fall out of the analysis, such as: attributes that always preclude the product from being suitable for EPRs with modulated fees;

- Develop and agree project implementation plan (PIP) with Defra, finalising details on activities, timescales, QA plan, risks and stakeholder communication/engagement plan. Any deviation from this agreed PIP should be agreed by both parties and recorded via an updated PIP. An inception meeting will be held face to face with Defra, to go through the draft PIP prior to finalisation.
- Fortnightly teleconferences with the Defra Project Officer on an update of progress (in line with the PIP), forthcoming tasks and any issues arising and how these might be overcome. An email update will be provided 24 hours before the scheduled meeting.
- There will also be weekly project team teleconference meetings between BRE and Oakdene Hollins alongside specific task meetings when needed, with the wider project team included.

Quality assurance (QA) and risk assessment

BRE has developed and implemented a quality management system that is certified under ISO 9001 which means that quality objectives are set and measured throughout the project lifecycle with the aim of ensuring that outputs produced comply with stringent minimum standards. We have a tried and tested system in place to produce reports, their review, the incorporation of Defra comments and re-delivery and sign off for final versions. The QA plan will provide a framework through which the quality of the outputs; and all process and activities that contribute to those outputs, can be ensured. This will be achieved through the identification of quality objectives (what level of quality Defra requires), the roles and responsibilities of those involved in QA on this project, the standards and codes that must be adhered to and the practical means by which QA will be delivered. This QA plan will be developed at the project's outset and then reviewed and agreed with the Defra Project Manager. Our objective is to ensure that the main outputs of the research, are 'fit for purpose' to support Defra decisions into the future beyond the end date of this project.



Risk description	Probability	Impact	Mitigation & Management
Data availability and/or quality	Low	High	We have access to a wealth of market data on construction and bulky waste, some unique to us and we have made initial contact with several additional data gatekeepers to mitigate against this. Additionally, the use of estimates, scaling methods, proxies and other means to bridge these gaps will be transparently presented and all relevant rationale described. We can also use the expert panel, to review these. Use of NDA could be used if appropriate to gain access to certain company data (that would then be anonymised).
Staff changes in project team impact on delivery and securing project outcomes	Low	Med	Both BRE and Oakdene Hollins can use other experienced internal consultancy staff, and if necessary, we also have a comprehensive associate database for specialist and general expertise. For policy development and modelling, the input can be increased if required.
Lack of clarity around project roles impedes effective project setup and delivery	Low	Med	Project management and task structure should facilitate clarity of roles. Weekly communication between Oakdene Hollins and BRE will ensure adherence to the PIP and flag up any clarification issues within a short timescale.
Scope changes and lack of clarity around client requirements and desired outcomes	Low	High	Early discussion, regular updates and communication to enable frequent feedback opportunities with Defra to ensure that expectations are met. We have found the PIP approach to be very effective in systematically identifying and agreeing any required changes.
Engagement with industry stakeholders	Low	High	We have made initial contact with several key stakeholders who have agreed, in principle, to support the study, in the form of an expert panel. Utilise the excellent relationships we enjoy with industry bodies and companies related to both 'sectors'.
Real world relevance of the project outputs	Med	Med	We have incorporated stakeholder engagement and an expert panel at key stages within the study. This will ensure the outputs are representative of the products selected for study.

Prices

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

2. Invoices will be submitted upon satisfactory completion of the milestones stated in the Supplier's Commercial Workbook.
3. The Supplier shall provide the Authority an invoice of the eligible costs properly incurred by the Contractor in carrying out the project.
4. Subject to any variation of the project, the amount in Paragraph 1 shall remain throughout the duration of the agreement.
5. Within 30 days of receiving an invoice satisfactory to the Authority, the Authority shall pay to the Supplier, the amount of the eligible costs which the Authority reasonably considers to have been properly incurred by the Supplier in carrying out the project during the relevant period.