



Department
for Environment
Food & Rural Affairs

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[REDACTED]
Vivid Economics Ltd
131-151 Great Titchfield Street
London
W1W 5BB

ref:23278/ECM_52096
Date: 24th April 2018

Dear Sirs

Award of contract for the supply of a Natural Capital Finance Model

Following your tender for the supply of a service to provide the following financial viability impact to:

- establish baseline costings
- explore a series of counter-factual scenarios to test the impact of biodiversity net gain on the financial viability of these projects.

to Defra, we are pleased to award this contract to you.

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

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

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- 1) The charges for the Services shall be as set out in Annex 2, Vivid Economics Ltd's quotation dated 19/4/18

- 2) The specification of the Services to be supplied is as set out in Annex 3, Vivid Economic Ltd's Tender submitted by email on 19 April 2018
- 3) The Term shall commence on 2nd April 2018, the Expiry Date shall be 15th June 2018.
- 4) The address for notices of the Parties are:

Customer

Natural England/Defra
Defra's Natural Environment Strategy
Team Area 1B Nobel House,
Smith Square,
London SW1P 3JR

Contractor

Vivid Economics Ltd
131-151 Great Titchfield Street
London
W1W 5BB

Attention: [REDACTED]

Attention: [REDACTED]

Email: [REDACTED]

Email: [REDACTED]

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

Payment

All invoices should be sent, quoting a valid purchase order number (PO Number), to: Accounts-Payable.def@sscl.gse.gov.uk Shared Services Connected Limited, PO Box 790, Phoenix House, Celtic Springs Business Park, Newport, Gwent, NP10 8FZ. Within 10 Working Days of receipt of your acceptance of this letter via Bravo, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

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

Liaison

For general liaison your contact will continue to be [REDACTED] as detailed above.

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Goods. Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000. Acceptance of the offer comprised in this Agreement must be made within 7 days from the date of this Award Letter and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("Bravo"). No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract

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Yours sincerely


Senior Category Manager
Defra Group Commercial





Department
for Environment
Food & Rural Affairs

Short Form Contract

Contract for Services: Natural Capital Finance Model

Contract Reference: 23278/ECM_52096

April 2018

Contents

1. Interpretation	6
2. Basis of Agreement	9
3. Supply of Services	9
4. Term	10
5. Charges, Payment and Recovery of Sums Due	10
6. Premises and equipment	12
7. Staff and Key Personnel	13
8. Assignment and sub-contracting	14
9. Intellectual Property Rights	14
10. Governance and Records	15
11. Confidentiality, Transparency and Publicity	16
12. Freedom of Information	18
13. Protection of Personal Data and Security of Data	19
14. Liability	20
15. Force Majeure	21
16. Termination	21
17. Compliance	22
18. Prevention of Fraud and Corruption	23
19. Dispute Resolution	24
20. General	25

21. Notices	26
22. Governing Law and Jurisdiction	26

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”	<p>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:</p> <p>Government Department;</p> <p>Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>Non-Ministerial Department; or</p> <p>Executive Agency;</p>
“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;
“Customer”	means the person identified in the letterhead of the Award Letter;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Contractor in writing;
“Party”	the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Contractor or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the 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;
“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:
 - 9.3.3 any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
 - 9.3.4 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,
 - 9.3.5 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 Contractor shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 13.2. Notwithstanding the general obligation in clause 13.1, where the Contractor is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Contractor shall:
 - 13.2.1. ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
 - 13.2.2. provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Contractor is complying with its obligations under the DPA;
 - 13.2.3. promptly notify the Customer of:
 - a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
 - b) any request for personal data; and
 - 13.2.4. ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.
- 13.3. When handling Customer data (whether or not Personal Data), the 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.

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.

Annex 2 - Prices and Payment

The Contract Price shall be £20,000 excluding VAT. Payment shall be made against the following milestones

Project Timetable and payment milestones

Expected Date	Deliverables	Payment Milestones
31 st May 2018	Draft Report	
15 th June 2018	Final Report	Payment Milestone

Annex 3

This Section sets out the Authority's requirements.

Biodiversity Net Gain – Financial Viability Impact Assessment

Background

Biodiversity net gain is fast gaining traction at policy, planning and industry level. However, many developers remain reluctant to commit to voluntarily delivering biodiversity net gain outcomes, in the absence of a local plan requirement for them to do so, out of concern for the impact that it could have upon their projects' financial viability. Equally, planners can be reluctant to encourage biodiversity net gain through its adoption into local plans and strategies as they fear that it could impact negatively upon the delivery of their housing numbers.

These concerns are largely driven by a lack of evidence about the financial costs of delivering biodiversity net gain, especially in relation to housing development. There is no hard data available on the financial costs to developers looking to deliver net gain, in particular whether there are situations and scenarios where achieving biodiversity net gain would compromise project financial viability.

The Government's recently published 25 Year Environment Plan set a goal to '*embed an environmental net gain' principle for development, including housing and infrastructure*. In the short-term the Plan commits Government to '*work in partnership with other Government bodies, local planning authorities and developers to mainstream the use of existing biodiversity net gain approaches within the planning system, update the tools that underpin them and reduce process costs on developers*'.

This project will provide key evidence and data to support that aim by looking at the impacts of biodiversity net gain outcomes upon financial viability for housing development within the current planning system. It aims to fill the current evidence gap. We recognise the need to expand the scope of enquiry into broader natural capital gain impacts upon financial viability but the scope of this project is on biodiversity net gain.

Objectives

The over-arching aim of the project is to examine and test whether or not there are particular housing development scenarios where achieving a biodiversity net gain outcome would compromise project financial viability.

Working with a combination of published and business data (from current or past projects) the project will:

- establish baseline costings
- explore a series of counter-factual scenarios to test the impact of biodiversity net gain on the financial viability of these projects.

The project will identify and analyse the actual or likely impact of biodiversity net gain upon housing development financial viability in the most commonly found development scenarios in England. This is likely to include;

- urban & non-urban developments
- high density and low density developments
- development in high economic growth and low economic growth areas
- development in affluent and within deprived regions

N.B. – other common scenarios could be considered

The project will examine the impact upon financial viability of biodiversity net gain delivered in the above range of scenarios:

- entirely within the development 'red line'
- entirely through the use of offsite delivery via biodiversity offsetting
- a combination of the above

The project will test what, if any, impact the inclusion of a local plan requirement to deliver a biodiversity net gain outcome in housing developments has upon financial viability.

The project would also like to test what the current average levels of biodiversity loss/gain incurred through housing development in the scenarios previously described are e.g. are current high/low density, urban/rural developments in high/low growth areas resulting in an overall biodiversity loss or gain? This to be through a combination of retained and on-site habitat and green infrastructure creation or any off-site mitigation provided through existing s106 or community infrastructure levy (CIL) contributions. If so, an estimate of the percentage scale of loss/gain to be provided.

This work relates to testing the viability of various policy options on net gain. A recent evidence report (HMT Natural Capital Costings Report, May 2017) revealed geographical variation in the viability of net gain schemes because of varying land prices. Vivid

Economics are uniquely placed to provide consideration of the additional financing mechanisms required to help with the viability of net gain policy options, because of their ongoing work for Defra to develop a Strategic Outline Case and Outline Business Case for a natural environment impact fund. Net gain is a key project model identified as part of that work, which is not yet complete or published, so Vivid have a unique perspective on what additional financing mechanisms are required

The project will base biodiversity net gain calculations upon the [2012 Defra Biodiversity Metric](#). However, it will seek to account for proposed changes in that metric, especially in relation to the inclusion of green infrastructure into a planned update to the metric¹. Biodiversity net gain is assumed to have occurred when a biodiversity unit calculation gain of +5% above the baseline has been calculated.

The project is interested at testing the impact of a biodiversity net gain requirement upon development financial viability in the following range of biodiversity net gain scenarios:

1. a **5% biodiversity unit gain** above baseline (as calculated using the Defra biodiversity metric)
2. a **10% biodiversity unit gain** above baseline (as calculated using the Defra biodiversity metric)
3. a **20% biodiversity unit gain** above baseline (as calculated using the Defra biodiversity metric)

Tasks

The project consists of the following key tasks:

- attend project inception meeting and agree project scope (in London, location tbc)
- create a project plan
- undertake an initial evidence/literature review and gather data relating to costs of delivering a range of potential Net Gain outcomes from on the ground experience
- identify, make recommendations and agree the key development (housing) scenarios in which to test for the impact upon financial viability of biodiversity net gain outcomes
- undertake an analysis of the impact on project financial viability of a biodiversity net gain outcome on the above scenarios
- Interim project meeting (teleconference)
- produce a set of interim conclusions
- project meeting (f2f in London, venue tbc)
- produce a set of final conclusions

¹ Natural England are developing an update to the 2012 metric to be launched in September 2018

Outside of the meetings scheduled the contractor and named project lead (see main point of contact details below) will hold weekly telecalls to keep abreast of progress and flag any issues that arise.

Outputs (and format)

The project outputs are to be produced in a written final report in word format (and any accompanying visuals/graphics).

Management (eg steering group set up)

The project is being overseen by Natural England on behalf of Defra but includes a steering group drawn from Government and Industry (housing developers). Steering group is being finalised but membership will likely comprise representatives from:

- Natural England
- Defra
- Ministry of Housing, Communities and Local Government

Separately the project steering group will liaise with representatives of interested developers (up to 3 or 4)

The main point of contact for the project is [REDACTED] in Natural England
[REDACTED]

Vivid Economics Ltd Quotation response

Skills and expertise of staff

Vivid Economics is a leading strategic economics consultancy with global reach. We strive to create lasting value for our clients, both in government and the private sector, and society at large.

We are a premier consultant in the policy-commerce interface and resource- and environment-intensive sectors, where we advise on the most critical and complex policy and commercial questions facing clients around the world. The success we bring to our clients reflects a strong partnership culture, solid foundation of skills and analytical assets, and close cooperation with a large network of contacts across key organisations. From our beginnings in 2006, we have become well recognised and trusted in our field, and known for our uncompromising quality.

In all our work, we put economics to good use by:

- addressing the public interest to enhance both our clients' interests and the public good;
- supporting important decisions and carrying the argument to implement them.

We enjoy close partnerships with clients who are large industrials, institutional investors, government departments, banks and private equity firms, non-governmental organisations, international financial institutions, law firms and strategic advisory firms.

Our natural resources practice, led by [REDACTED] and [REDACTED], specialises in economic topics related to natural resource management, including valuation and strategy, policy and regulatory design, interactive model building, and finance and institutions. Areas of work include water, agriculture, forestry, fisheries, wastewater, and biodiversity, and we have experience in the UK, Europe, Africa, Latin America, and Australia. Our clients include public bodies, NGOs, MDBs, financiers, utilities and private sector clients.

[REDACTED], Vivid Economics, will be the Project Director. He will oversee the achievement of project goals, the client relationship and satisfaction, development of the methodology, the running of the consortium, the interpretation of results and quality control. He ensures that the procedures relating to project management, quantitative audit and quality control are followed. He brings his experience as a [REDACTED] the Natural Capital Committee. [REDACTED] has over 20 years' experience in the economics of energy and climate, natural resources management, infrastructure, heavy industry and finance. He has led several hundred projects, mainly across Europe, North America and Oceania, covering a wide range of strategic, policy, quantitative simulation, econometric, financial and market analyses.

[REDACTED] is to oversee the delivery of tasks, the preparation of report materials, engage with stakeholders and to provide a close working relationship with the client on day to day and project planning issues. She will oversee the building of the model and the scenario analyses. She has significant experience in environmental policy design and she previously participated in projects examining financing mechanisms for natural resource assets.

[REDACTED], Vivid Economics, will build the model. [REDACTED] an economist within Vivid's Cities & Infrastructure and Energy & Industry practice groups. Her work is focused on urban logistics and infrastructure, energy transitions, energy fiscal policy, development of performance indicators and assessing the impact of policy

interventions in the area of green growth in cities and energy globally. She has extensive experience performing economic and spatial data modelling using packages such as Stata and GIS.

[REDACTED], Vivid Economics, will carry out the literature review, data collection and will participate in stakeholder interviews.

In the event of any of these staff becoming unavailable, Vivid can supply substitutes able to fulfil the roles.

Quality control

Vivid Economics has documented procedures which are followed in all projects, with senior team members taking responsibility for compliance. All staff members are inducted into the procedures upon joining the firm and the procedures are periodically updated to incorporate learning from project evaluations. Compliance with these procedures is monitored on every project and is reviewed across the company every six months as part of our Balanced Score Card, to which all employees contribute. The results are discussed periodically at company team meetings and action taken as necessary to improve performance.

The main procedures relate to:

- project management;
- house style for the production of documents;
- a documented audit procedure for quantitative work, with audit reports shared with the client; and
- feedback and performance evaluation during a project and at the end of the project, both internally and with the client.

Vivid Economics employs a work strategy designed to give the maximum client benefits and the best analytical rigour. That strategy involves:

- structured discussions with clients;
- evidence-based analysis and hypothesis testing;

- regular team discussions;
- gradual evolution of evidence base in liaison with client through life of engagement, using detailed slide packs;
- strong relationships with leading academics;
- exposure of results to scrutiny by relevant experts where feasible;
- comparison of results with other published work;
- clear roles and responsibilities; and
- internal peer review.

Vivid Economics applies the highest quality standards of written work:

it allows sufficient time for drafting;

all drafts are prepared through several stages; and

all significant outputs undergo professional production editing.

Approach

Project objectives and scope

The over objective of the project is to examine the impacts of biodiversity net gain obligations on the financial viability of housing developments.

This assessment will be three-fold:

to examine and assess whether there are particular housing development situations where achieving a biodiversity net gain outcome could compromise financial viability;

to examine the extent to which better biodiversity outcomes could be achieved with the current envelope of developer contributions to the environment;

to assess the impact on financial viability of the inclusion in local plans of a requirement to deliver biodiversity net gain in housing developments.

Given the wide range of situations, the implications of biodiversity net gain on financial viability will be examined for several scenarios and situations. These cover three dimensions:

the type of biodiversity net gain mitigation, both within the development 'red line' and offsite delivery via biodiversity offsets;

the situation, using a classification such as the following:

urban and non-urban developments;

high density and low-density developments;

developments in high growth and low-growth areas;

the stringency of the biodiversity net gain requirement (as calculated using the Defra biodiversity metric):

a 5% biodiversity unit gain;

a 10% biodiversity unit gain;

a 20% biodiversity unit gain.

Proposed methodology

In the first phase of the project, we will conduct review the costs and benefits which might play a role in the 'viability equation'. The costs of net gain provisions include land purchase costs, enhancement costs, maintenance costs and finance costs, while the benefits will come from value enhancements (either for residents or non-residents) and cost reductions for developers (in terms of reduced development time and transaction costs). Other benefits, such as amenity value, and effects on health and well-being depend on where net gain outcomes take place.

The incidence of these costs and benefits will then be examined more closely, in order to map these costs and benefits to different stakeholders (developers, land owners, local planning authorities, residents and house buyers) and to assess the share of biodiversity net gain costs which is likely to be passed back to land owners and passed forward to house buyers.

A formal model which clearly sets out the interactions between these variables and how they contribute to a 'viability test' will then be created in Excel and will be populated with data for the specific scenarios and settings described above. Following an initial evidence and literature review, data collection will be conducted in close consultation with MHCLG, Natural England and Defra to ensure the relevance of the sources used.

At the same time, interviews with a variety of stakeholders will be organised to get a full understanding of:

the rationale for project developers to engage in biodiversity net gain;

the full costs attached to onsite mitigation and offsite offsets;

the cost-savings, benefits and value enhancements derived from net gain provisions.

The insights brought by these interviews will be used to confirm and complement model assumptions and data sources: the aim of this phase is to obtain more reliable estimates of the variation in available financial surplus by location and development type.

This quantitative analysis will be completed by a collection of case studies, which will be used to illustrate the different dimensions pertaining to the linkages between net gain outcomes and financial viability.

These findings will be integrated in the final report, which will also include conclusions regarding the expected impacts of biodiversity net gains requirements on the most common development scenarios in England.