



# Short Form Contract

Provision of Goods / Services (Natural England)

## ECM\_59331 - Habitat Creation Audit

October 2020

THIS CONTRACT is dated 15/10/2020

BETWEEN

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

Exegesis SDM, Great House Barn, Talgarth, Powys, Wales, LD3 0AH (the “Supplier”)

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

## **BACKGROUND**

- a) The Authority requires the services set out in Schedule 1 (the “Services”).
- b) The Authority has awarded this contract for the Services to the Supplier and the Supplier agrees to provide the Services in accordance with the terms of the contract.

## **AGREED TERMS**

### **1. Definitions and Interpretation**

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

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

‘Authority Website’: [www.naturalengland.org.uk](http://www.naturalengland.org.uk)

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

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

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

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

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

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

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

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

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

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

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

'DPA 2018': the Data Protection Act 2018.

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

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

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

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

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

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

'IP Materials': all Intellectual Property Rights which are:

- a) furnished to or made available to the Supplier by or on behalf of the Authority; or
- b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

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

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

'Personal Data': has the meaning given in the GDPR.

'Personal Data Breach': has the meaning given in the GDPR.

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

'Processor': has the meaning given in the GDPR.

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

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

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

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

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

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

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

'VAT': Value Added Tax.

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

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

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;
- f) references to the Services include references to the Goods;
- g) references to Clauses and Schedules are to clauses and schedules of the Contract; and
- h) the Schedules form part of the Contract and have effect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

## **2. Contract and Contract Term**

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

2.2 The Contract is effective on 26<sup>th</sup> October 2020 (the “Commencement Date”) and ends on 31<sup>st</sup> March 2021 (the “Expiry Date”) unless terminated early or extended in accordance with the Contract.

## **3. Price and Payment**

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

3.2 The Authority shall:

- a) provide the Supplier with a purchase order number (“PO Number”); and
- b) pay all undisputed sums due to the Supplier within 30 days of receipt of a Valid Invoice.

3.3 A Valid Invoice shall:

- a) contain the correct PO Number;
- b) express the sum invoiced in sterling; and
- c) include VAT at the prevailing rate as a separate sum or a statement that the Supplier is not registered for VAT.

3.4 The Supplier shall submit invoices to the Authority at the following addresses: [APinvoices-NEG-U@gov.sscl.com](mailto:APinvoices-NEG-U@gov.sscl.com) or SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ

3.5 The Supplier acknowledges that:

- a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Authority will not be liable to pay the Supplier any additional VAT;
- b) invoices which do not include the information set out in Clause 3.3 will be rejected.

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

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

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

## **4. Extension of the Contract**

4.1 The Authority may, by written notice to the Supplier, extend the Contract for a further period up to 3 months.

## **5. Warranties and Representations**

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

- a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Contract and to provide the Services;
- b) the Contract is executed by a duly authorised representative of the Supplier;
- c) in entering the Contract it has not committed any Fraud;
- d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;
- e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
- g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;
- h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
- i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- j) it will comply with its obligations under the Immigration, Asylum and Nationality Act 2006.

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

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

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

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

## **6. Service Standards**

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

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

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

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

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

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

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

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

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

## **7. Termination**

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

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

- a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
- b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;
- c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;
- d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;
- e) subject to Clause 7.3, the Supplier commits a Default;
- f) there is a change of control of the Supplier; or
- g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Authority).

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

## **8. Consequences of Expiry or Termination**

8.1 If the Authority terminates the Contract under Clause 7.2:

- a) and then makes other arrangements for the supply of the Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term; and
- b) no further payments shall be payable by the Authority to the Supplier (for the Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under Clause 8.1(a).

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

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

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

8.3 Save as otherwise expressly provided in the Contract:

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

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

## **9. Liability, Indemnity and Insurance**

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

a) death or personal injury caused by its negligence;

b) Fraud or fraudulent misrepresentation; or

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

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

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

9.4 Subject to Clause 9.1:

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

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

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

(iii) indirect or consequential loss or damage

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

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

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

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

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

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

## **10. Confidentiality and Data Protection**

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

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

- a) required by any applicable law;
- b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;
- c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 10.1; or
- d) which is already lawfully in the Supplier's possession prior to its disclosure by the Authority.

10.3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 3. The only processing that the Supplier is authorised to do is listed in Schedule 3 by the Authority and may not be determined by the Supplier.

10.4. The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

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

- a. a systematic description of the envisaged processing operations and the purpose of the processing;
- b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c. an assessment of the risks to the rights and freedoms of Data Subjects; and
- d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

- a. process that Personal Data only in accordance with Schedule 3 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- b. ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- c. ensure that:
  - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 3);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
    - A. are aware of and comply with the Supplier's duties under this clause;
    - B. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
    - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

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

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

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

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

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

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

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

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

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

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

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

f. becomes aware of a Data Loss Event.

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

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

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

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

- c. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by the Authority following any Data Loss Event;
- e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

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

- a. the Authority determines that the processing is not occasional;
- b. the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- c. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

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

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

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

- a. notify the Authority in writing of the intended Sub-processor and processing;
- b. obtain the written consent of the Authority; and
- c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 10 such that they apply to the Sub-processor; and.
- d. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

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

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

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

## **11. Freedom of Information**

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

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

## **12. Intellectual Property Rights**

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

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

## **13. Prevention of Corruption and Fraud**

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

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

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

## **14. Discrimination**

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

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

## **15. Environmental and Ethical Policies**

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

## **16. Health and Safety**

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

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

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

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

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

## **17. Monitoring and Audit**

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

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

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

## **18. Transfer and Sub-Contracting**

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

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

- a) remain responsible to the Authority for the performance of its obligations under the Contract;
- b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;
- c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;
- d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.

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

- a) any Contracting Authority or any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- b) any private sector body which performs substantially any of the functions of the Authority.

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

## **19. Variation**

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

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

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

- a) allow the Supplier to fulfil its obligations under the Contract without the Variation; or
- b) refer the request to be dealt with under the Dispute Resolution Procedure.

## **20. Dispute Resolution**

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

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

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

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

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

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

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

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

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

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

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

## **21. Supplier's Status**

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

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

## **22. Notices**

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

## **23. Entire Agreement**

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

## **24. Third Party Rights**

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

## **25. Waiver**

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

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

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

## **26. Publicity**

26.1 The Supplier shall not without Approval:

- a) make any press announcements or publicise the Contract or its contents in any way; or
- b) use the Authority's name or logo in any promotion or marketing or announcement.

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

## **27. Force Majeure**

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

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

## **28. Governing Law and Jurisdiction**

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

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

## **29. Electronic Signature**

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

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

29.3 No other form of acknowledgement will be accepted.

## **30. Precedence**

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

- a) the special terms below;
- b) the main terms of the Contract (pages 1 to 15);
- c) any other document referred to in the Agreement

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

# SCHEDULE 1 - SPECIFICATION OF SERVICES

## Continued Development of an Audit of Existing Priority Habitat Creation/Restoration Activity relating to planning/development activity

**Project Aim: Production of a comprehensive spatial layer of habitat creation/restoration activity resulting from planning and development that contributes towards Bio2020 Outcome 1B.**

This is an extension to previous works completed by Exegesis SDM Ltd as outlined in the following 3 reports;

- Lush, M. J. (2013) “*Mapping Green Infrastructure delivery*, Project report prepared for Natural England”, Talgarth, ExeGesIS SDM Ltd.
- C. E. Lush and M. J. Lush (2015) “*Green Infrastructure Mapping 2014-15, Final report for Natural England*”, 01 April 2015, ExeGesIS SDM Ltd
- Lush M. J. (2017) “*Green Infrastructure Mapping 2016-17, Final report, Project report prepared for, Natural England, 27 April 2017*”, ExeGesIS SDM Ltd

### Background

Current reporting against the 200,000ha new habitat creation target under Outcome 1B of the Bio2020 Strategy has taken place annually with the final report due at the end of this year. Data from a range of partners and delivery mechanisms is collated annually but is usually not available until May or June and thus the final report is not likely to be prepared until mid-2021. Table 1 below provides details of the major delivery reported as of the end of 2018 and this includes 13,098 ha of habitat data collated by Exegesis (coloured green in the table).

The current reporting process predominantly relies on extent figures provided internally from AES delivery plus that from partners. Little of the partner data is available spatially in sufficient resolution to prevent double counting or to ascertain the contribution such delivery has made towards meeting the desired outcomes as set out within TBG5a

“*Biodiversity 2020* aims to ensure that the right types of additional habitat is delivered in appropriate places, to contribute to the establishment of more resilient and coherent ecological networks - the types, extent and pattern of priority habitats are all important factors in restoring biodiversity and delivering other ecosystem services.”

The 3<sup>rd</sup> year progress report for the 25YEP has recently been published but does not include data on the delivery against the 500,000ha new habitat creation target. CEH are currently investigating issues relating to reporting against the 25 YEP D1 metric (Habitat condition, extent and connectivity) but this work does not include any reference to the production of a spatial baseline of current delivery under Bio2020. It is important that the 500,000 ha represents a true net gain for biodiversity and that current gains from Bio2020 are not lost or double counted.

Previous work has mapped both green infrastructure and habitat creation using the NE casework tracker as the baseline for identifying sites to investigate. The priorities for the project

this year needs to trail the approach more comprehensive rather than simply restricted to the NE casework to collect as much data as possible but also to understand the total financial cost of developing a national picture of delivery through local planning authorities. The project also needs to consider both green infrastructure and habitat creation but there will be a focus more on the habitat creation.

## **Project Proposal**

This current project is to collate and document as much additional information from Local Authorities as possible and to provide a spatial layer of the priority habitat creation and restoration work planned, underway or completed between Jan 2011 and Dec 2020. In addition, to trial the approach in a limited number of LAs to consider delivery of green infrastructure.

This extension to the earlier work undertaken by Exegesis in 2016/17 and the two previous contracts outlined above. The primary focus is on habitat creation and restoration activity that is either planned, underway or completed since Jan 2011.

The data capture methodology will be the same as that undertaken in 2016 but will require slight modifications as data capturing will not be restricted to just Natural England's casework tracker. This time additional cases through independent identification of LA planning cases need to be assessed by searching the LA planning portals and/or liaison with relevant LA planning officers and/or NE staff.

This work should also focus on capturing the delivery reported by mineral companies at a national level some of which is likely to fall within the '**Nature After Mineral's**' project. Liaison with some of the key mineral companies that currently report against the Biodiversity 2020 Outcome 1B and/or the 'Nature After Minerals' project should also help provide additional useful information (see Annex 1)

There are 343 Local Authorities in England and therefore it will be important to prioritise which areas are selected to maximise the outputs from this contract and to be able to provide a reasonable estimate of any additional resources that may be required to complete a national audit. The Local Authorities to be targeted will be agreed between NE and the contractor prior to the commencement of the project as some may need to be prioritised for this contract. Further information relating to this is provided in Annex 2.

The Proposed Data Capture Methodology for planning related cases will be the same as that previously undertaken as set out in the 2016 Audit Report; *Lush M. J. (2017) "Green Infrastructure Mapping 2016-17, Final report, Project report prepared for, Natural England, 27 April 2017"*, ExeGesIS SDM Ltd

## **Project Outputs**

The outputs of this contract will be:

- 1 - Final Report** – this should include details of the methodology used and the work undertaken. It should highlight any issues relating to data collation a gap analysis with costings for further work where tasks have not been completed. The report should

include a breakdown of the results with figures relating to the extent of additional data the project has sourced both nationally and within each LA area. It is essential that the extent of additional habitat identified by this work is seen to be contributing towards the Bio2020 Outcome 1B target.

The report should include a section on next steps and an estimate of costs for completing a national audit. An executive summary, drawing on the findings of the assessment and project areas/case studies is also required

**2 - Data**– GIS shape file in relevant format for NE use identifying locations of habitat creation and restoration activity with relevant attributes plus all data and metadata collected during the survey and associated spreadsheets populated with data will be provided to Natural England at the completion of the project in line with previous data supplied.

**Table 1 - Habitat creation/restoration reported at end of 2018**

Main Organisation	Mechanism	Ha delivered
Highways England	HE Biodiversity Plan	557
National Trust	NT Strategy to 2025	5,406
Environment Agency	Habitat Creation Project	6,792
Forestry Commission	Woodland creation	13,004
	PAWS Restoration	24,457
	Open Habitats Policy	4,688
Natural England	AES Agreements	Arable field margins Other Priority Habitats
		32,945 38,199
	Green Infrastructure delivery recorded by NE	13,098
LPA's	Priority Habitat delivered through Green Infrastructure	unknown
Mineral Companies	Site Restoration	8,096
External Partners	BARS actions reported between 2011 to 2015/16 & Million Ponds	3,802
	NIA's up to 2015/16	3,353
<b>TOTAL</b>		<b>154,000</b>

██████████

	██████████	██████████
■	██████████	██████████
■	██████████	██████████
	██████████	
	■ ██████████	
	██████████	
	██████████	
	■ ██████████	
	██████████	
	██████████	
	■ ██████████	
	██████████	
■	██████████	██████████
■	██████████	██████████
■	██████████	██████████
	██████████	

## Delivery from Mineral Restoration

Broad Habitat type																	
															TOTAL hectares (excl: rivers, hedgerows, rock face)		
	Rivers (km)	Lakes & Ponds	Arable Margins	Hedgerows (km)	Broadleaved Woodland	Native Pinewoods	Lowland dry acid grassland	Calcareous grassland	Neutral Lowland & Upland meadows	Floodplain grazing marsh	Dwarf shrub	Fen, Marsh, Swamp	Raised bog	Blanket bog	Inland rock	rock face (m)	5945.8
Created to end 2016	7	1136	116	79	1393	24	345	181	1148	175	227	307	1.3	1.5	250	965	
Planned - not yet delivered	7	1476	31	237	2077	10	794	835	1113	105	517	1234	25	11.8	439	1906	8667.8

(Total includes 641ha un-differentiated habitat creation from one operator)

Delivery co-ordinated by Mineral Companies Landscape/ Biodiversity Working Group including data from the following companies; Cemex, Sibelco, Smiths, Hanson, Lafarge-Tarmac

The MPA [Biodiversity Strategy](#) states that “*The mineral products industry has a proven legacy of high quality restoration and has further significant potential to protect and enhance biodiversity, including common as well as rare and threatened species and habitats. Continuing good site management, restoration and after-use of minerals sites is expected to contribute significantly to the achievement of biodiversity priorities, particularly for more, bigger, better and joined-up habitats, and MPA members has a unique role to play in this*”.

It also states that “*Our monitoring indicates that to date that at least 5,000 hectares of priority habitat has been created on members’ sites, with at least a further 6,000 hectares committed to in approved restoration plans*”.



## [Nature After Minerals](#)

This RSPB led project which publication is now dated the information is still relevant – see below, this needs further investigation as part of this project.



## **Specification Annex 2 List of Local Authorities**

The table below shows the number of each type of council.

26 County councils  
192 District councils  
55 Unitary authorities  
36 Metropolitan districts  
32 London boroughs  
City of London  
Isles of Scilly  
343 in Total

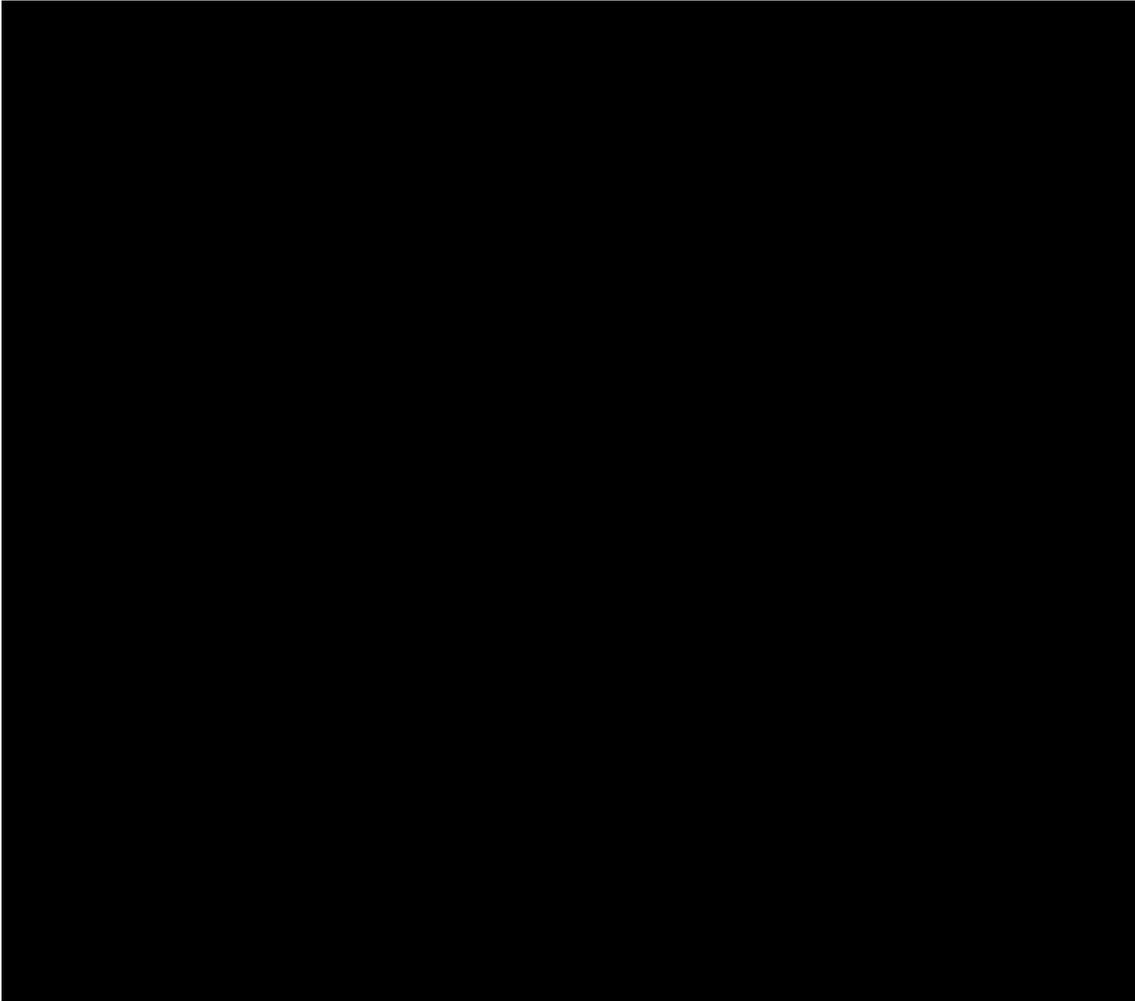
The selection of LAs for this contract should focus on those that may anticipate maximum outputs and therefore those predominantly composed of urban areas where large areas of new habitat may not be expected should be considered low priority. In order to understand the ultimate resource required to complete a national audit some of these will still need to be contacted.

The following 10 LAs are considered high priority for this project.

- Cornwall
- Cumbria
- Northumberland
- Greater Manchester
- Buckinghamshire
- Oxfordshire
- Peterborough
- Bedfordshire
- Cambridgeshire
- Northamptonshire



## SCHEDULE 2 - PRICES



## SCHEDULE 3 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority, who may take account of the view of the Supplier, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are:  
[REDACTED]
3. The contact details of the Supplier Data Protection Officer are:  
[REDACTED]
4. The Supplier shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor in accordance with Clause 10.
Subject matter of the processing	The processing of data is needed to ensure the Supplier can fulfil its contractual duties and deliver the services to Natural England required.
Duration of the processing	For the duration of the contract
Nature and purposes of the processing	<p>The nature of the processing will be in accordance with and to facilitate the delivery of the contact.</p> <p>Reasons include employment processing and sub-contractor employment processing.</p>
Type of Personal Data	<p>The Supplier may collect, store, and use the following categories of personal information:</p> <ul style="list-style-type: none"> <li>• Personal contact details such as name, title, addresses, telephone numbers, and personal email addresses.</li> <li>• Date of birth.</li> <li>• Gender.</li> <li>• Next of kin and emergency contact information.</li> <li>• National Insurance number.</li> </ul>

	<ul style="list-style-type: none"> <li>• Bank account details, payroll records and tax status information.</li> <li>• Salary, annual leave, pension and benefits information.</li> <li>• Start date.</li> <li>• Location of employment or workplace.</li> <li>• Copy of driving licence.</li> <li>• Recruitment information (including copies of right to work documentation, references and other information included in a CV or cover letter or as part of the application process).</li> <li>• Employment records (including job titles, work history, working hours, training records and professional memberships).</li> <li>• Compensation history.</li> <li>• Performance information.</li> <li>• Disciplinary and grievance information.</li> <li>• Information about your use of our information and communications systems.</li> <li>• Photographs.</li> <li>• Certificate, passes and licences relevant to the contract (e.g. H&amp;S certificates).</li> </ul> <p>Where relevant to the delivery of the contract the Supplier may also collect, store and use the following "special categories" of more sensitive personal information:</p> <ul style="list-style-type: none"> <li>• Marital status and dependants.</li> <li>• Information about race or ethnicity, religious beliefs, sexual orientation and political opinions.</li> <li>• Information about health, including any medical condition, health and sickness records.</li> <li>• Genetic information and biometric data.</li> <li>• Information about criminal convictions and offences.</li> <li>• Employment Start date.</li> <li>• Location of employment or workplace.</li> <li>• Copy of driving licence.</li> </ul>
Categories of Data Subject	The Supplier's Privacy Standard confirms that we may handle the Personal Data of our customers, suppliers, employees, workers and other third parties.

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Supplier will retain data for the minimum required time. The timing to return or destroy any data will depend on the contract or permitted reason for entering into the relationship and would be in accordance with the Supplier's project plan. This is likely to be a maximum of three or six months from the completion or termination of any contract or permitted reason. Data will be destroyed in line with the terms of the Contract.</p>
---	---