

# Short Form Contract

Provision of Goods / Services (Natural England)

## Ecm\_65548 and An evaluation of Post-Agreement Higher Level Stewardship (HLS) Permissive Access Provision

August 2022

THIS CONTRACT is dated 26/08/2022

BETWEEN

NATURAL ENGLAND of 2<sup>nd</sup> Floor, Arndale House, Manchester Arndale, Manchester, M4 3AQ (the "Authority"); and

England Marketing Ltd registered in England and Wales under number 3672905 whose registered office is The Research Hub, Fenside Road, Warboys, Cambridgeshire, PE28 2XR (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 30/08/2022 (the “Commencement Date”) and ends on 31<sup>st</sup> March 2023 (the “Expiry Date”) unless terminated early or extended in accordance with the Contract.

## **3. Price and Payment**

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

3.2 The Authority shall:

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

3.3 A Valid Invoice shall:

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

3.4 The Supplier shall submit invoices on completion of each milestone to the Authority at the following addresses: Accounts-Payable.neg@sscl.gse.gov.uk or SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ

3.5 The Supplier acknowledges that:

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

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

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

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

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

4.1 N/A

## **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

## An Evaluation of Post-Agreement Higher Level Stewardship Permissive Access Provision

### Background

Permissive access options were an element of agri-environment schemes until late 2010 when funding was withdrawn and the option discontinued for new agreements. The options continued to run in live agreements until their termination with the last ones expiring in 2020/21.

These options were designed to offer new permissive linear and open access options to landowners/farmers which would give recreational benefits to the public and support other HLS scheme objectives.

The individual options (HN1-7) were:

Options	Option rate £	No. of agreements	Option area (ha)	Option length (m)	Total cost *
HN1 - ASD to Nov 2010 Linear and open access base payment	350/agreement	1290			4,375,123
HN2 - ASD to Nov 2010 Permissive open access	41/ha	291	4074		1,492,535
HN3 - ASD to Nov 2010 Permissive footpath access	45/100m	890		1,437,023	6,076,346
HN4 - ASD to Nov 2010 Permissive bridleway / cycle path access	90/100m	335		1,221,356	10,160,244
HN5 - ASD to Nov 2010 Access for people with reduced mobility	100/100m	52		52,828	471,982
HN6 - ASD to Nov 2010 Upgrading CROW access for cyclists/horses	90/100m	20		30,659	245.992
HN7 - ASD to Nov 2010 Upgrading CROW access - people with reduced mobility	105/100m	8		3756	39,563

In November 2010 Defra, conscious that much of the established resource could be subsequently lost, contacted agreement holders to encourage continued provision of permissive access on a voluntary, unpaid basis.

Since 2010 the number of agreements has decreased year on year but we have no concrete indication how much of the provision was retained voluntarily. The 2013 permissive access evaluation indicated a significant percentage of providers were in theory willing to continue providing it unpaid but there has been no survey or assessment to establish just how many did this. We presume many stopped providing access and have occasionally received reports of closed routes from members of the public, Local Access Forums etc

Determining how many remained open would contribute to considerations around options for access provision in ELMS, particularly from a longer-term value for money perspective for permissive options, and as an indication of the general willingness of land managers to provide public access.

**A different approach to providing public access via Rural Development Programme funding was provided by the Paths for Communities (P4C) scheme**, which ran from 2012-13. This scheme encouraged and enabled local rural communities to work with landowners to develop and enhance local public paths and aimed to both extend the network and make it easier to use, in ways that delivered social and economic benefits.

**No follow-up has as yet been carried out to assess the current status of the P4C routes created but it would be useful to know if and how the routes are being maintained etc so it is proposed that a brief assessment is made, as part of this project, which would serve as a useful comparison to permissive access provision.**

The P4C scheme was launched in May 2012 with £2 million of funds provided under the Rural Development Programme for England (RDPE) to spend by March 2014. The scheme closed to new applications at the end of September 2013.

43 communities were awarded grants to the value of £1,970,375 (98.5% of the £2 million budget).

The P4C fund invested in over 183.2 km of Public Rights of Way (PROW) including both new creations and improvements to connecting routes. The scheme created an additional 76.29 km of new PROW consisting of 54.87 km of new bridleway and 21.42 km new footpath. In addition P4C secured improvements to a further 106.94 km of existing routes where these were connected to the new PROW created. Most of the routes provided access for walking, horse-riding and cycling and many of the projects also provided specific improvements for a range of users with limited mobility including wheelchair users and those with young children in pushchairs.

#### **Previous reviews of permissive access provision:**

*NE 2013: Natural England Commissioned Report NECR113: Higher Level Stewardship permissive access evaluation* The aim of the study was to evaluate the contribution of HLS permissive access options, and explore the potential for future voluntary provision of access.

*ADAS 2007 Evaluation of Access for the Less Mobile in Defra Agri-Environment Schemes;*

*2013 New Environmental Land Management Schemes (NELMS) Options Review: A brief overview to inform any NELMS/CS access provision drawing on the above reports and adviser experience.*

- Generally fulfilled scheme objectives

- Could provide valuable access resource for local communities and specific user group such as horse riders.
- Mostly popular with landowners and could promote better relationships between public and farmers.
- *Permissive access also enjoyed support from practitioners (For example: local Highways Authorities - including National Park authorities)* NE 2013 indicated over 50% of farmers would consider continuing providing access on a voluntary basis.
- Targeting proved difficult overly relying on take-up of other HLS options rather than being demand led.
- Take-up of more involved/demanding options eg access for disabled people, was more limited but could be of high value if of a high standard.
- Promotion could have been better
- Would have benefited from better monitoring ie visitor counts/surveys, more frequent inspection etc
- Value for money of permissive access proved difficult to assess – partly due to a lack of data but mainly in trying to effectively represent the broad range of parameters that ‘value’ engenders for users, landowners and communities in this context. However, the access options within HLS largely fulfilled their scheme objectives and compared favourably, in terms of scheme VFM, with other landscape and/or wildlife options via being easy to implement and immediately effective once the access was ‘open’.

Also Defra/NE 2014 *Paths for Communities, End of scheme report*

## Project Aim and Objectives

### Aim

- To determine the extent of voluntary access provision following the end of HLS scheme permissive access agreement terms.
- To record land owner/manager reasons for their decisions to continue/discontinue access provision.
- Assess current status of **Paths for Communities** agreements

### Objectives

- To assess the relative value for money of public access provision, primarily permissive and permanent statutory access options/agreements, to help inform ELMS options development.
- To help inform decisions relating to providing public access options within ELMS

## Project Scope and Requirements

Stages 1-3 tasks for contactor with input from steering group

### **Task 1: Survey design/contact selection**

- **Permissive access survey design:**
  - Selection of contacts: scheme participants who had HLS permissive access options. To achieve a statistically significant sample of c 200 it is likely that most if not all, of the total number of Environmental Stewardship agreement holders who had permissive access options (c1200) will need to be contacted.
  - It may be necessary to consider alternative methods of contacting previous agreement holders to ensure sufficient sample size e.g. via farming websites/other media
  - Environmental Stewardship Survey is primarily to establish if access is still provided/when access ended and the main reasons for decision.
  - Potential sub sample, using qualitative semi structured interviews, to add detail to motivations behind decision-making and attitudes to provision/cessation of permissive access + any subsequent ramifications for the provider e.g. material/social gains/losses.
- **Paths for Communities survey design:** Question choice to determine current status of routes, their management and maintenance, and any issues.
- Literature review. Contactors to familiarise themselves with past surveys and relevant assessments.

### **Task 2: Survey**

- Contact lists for both ES and P4C groups will be made available to contactors.

### **Task 3 Data analysis/reporting**

- Analysis of results from both surveys
- Report to Steering Group
- This project will be delivered in one phase aligned with the financial year 2022/23.

### **Stage 4 NE/Defra/Steering group analysis:**

- In-house analysis of survey results with reference to ELMS delivery

### **General Survey Requirements:**

Survey to be approved by Defra Surveys Unit

All works must adhere to Natural England's ethic requirements and the Survey Control protocol (see below) Contractors must be GDPR-compliant.

[Outputs - reporting table](#)

Outputs/reporting actions	Date by	Notes
<b>Initial report</b>	30 <sup>th</sup> September 2022	An initial report detailing the survey questions and analytical methodologies to be used for Task 2 is required. This will be agreed by the programme steering group and will then need to be submitted for approval to Defra's SCU. Approval by SCU may take 6 weeks.
<b>Literature review</b>	30 <sup>th</sup> September 2022	We recognise that there may be a very limited amount of additional directly relevant literature available to what has already been referenced in the Background section.
<b>Updates</b>	TBA	Via 'phone/MS Teams or similar
<b>Draft final report</b> + results, and analysis of the questionnaires	December 1 <sup>st</sup> 2022	<p>To include:</p> <ul style="list-style-type: none"> <li>• Context – brief background and objectives of the project</li> <li>• Methodology - proposals for sampling framework (including any caveats and assumptions used)</li> <li>• A section on each of the Tasks which presents and analyses the data and summarises the main findings from each Task. (the full literature review should be attached as an Annex)</li> <li>• A synthesis and analysis of findings across all the tasks which addresses the objectives set out in this specification.</li> <li>• Executive summary – a brief</li> </ul>



		<p>overview of the project and its main findings. This should be suitable for a Policy audience. Bullet points to highlight the key points may be useful.</p>
<p><b>Report sent for peer review</b></p> <p><b>Feedback no later than:</b></p>	<p>December 1<sup>st</sup> 2022</p> <p>December 23<sup>rd</sup> 2022</p>	<ul style="list-style-type: none"> <li>• The report will be externally peer-reviewed (note: the contractor will be responsible for arranging peer-review by two appropriate reviewers, to be agreed with the Natural England project officer) and be suitable for publication as a Defra science report. There should be a minimum of two peer reviewers and they must be independent of organisations working on the project. A cost for peer review should be itemised in the tender. This should take into account staff time to organise the peer review, staff time to edit reports in light of the reviews (subject to steering group agreement) and cover costs for reviewers if required. For carrying out the peer review Natural England will provide:</li> <li>• A form for peer reviewers to complete to guide them through key questions.</li> <li>• A declaration for reviewers to sign regarding the use of confidential information and any conflicts of interest.</li> </ul>
<p><b>Final draft</b> to Steering Group + all data/metadata collected during the project</p>	<p>January 16<sup>th</sup> 2022</p>	<ul style="list-style-type: none"> <li>• Natural England and Defra require the opportunity to comment on draft final reports after peer review.</li> </ul>

		<ul style="list-style-type: none"> <li>• All data and metadata collected during the survey, including any hard copies of field sheets and associated spreadsheets populated with data will be provided to Natural England/Defra at the completion of the project</li> </ul>
2 page summary/infographic/presentation to Steering Group	January 23rd 2023	<ul style="list-style-type: none"> <li>• A 2-page summary document detailing key outcomes and conclusions of the project (to be produced using the template attached at Annex 4)</li> <li>• An infographic showing key findings/results</li> <li>• A presentation of final results (by webinar) to key Natural England and Defra staff.</li> </ul>

Bidders should be aware that Natural England and Defra intend to publish final reports on Defra science web pages. All reports should be provided in MS Word and PDF format.

## Management

- The successful contractor should appoint a project leader who must have sufficient experience, authority to act on behalf of the contractor and time allocated to manage the project effectively. The project leader will be responsible for the management and delivery of the project and will act as the liaison point with the Natural England project manager. A project initiation call between the contractor project leader and the NE project manager will be required within one week of the start of the contract
- Natural England will establish a project steering group (PSG) to oversee the contract including representatives from NE and Defra and other partners if applicable.
- The contractor project leader in liaison with the NE project manager will be responsible for convening and chairing six PSG meetings. These should be held on Microsoft Teams, zoom or and equivalent

video conference facility. The meetings will be convened at project initiation, submission of literature review, questionnaire, results, first draft and final draft.

- Secretariat and production of minutes from meetings is the responsibility of the successful contractor who will share meeting minutes with the project team and steering group where applicable.
- The contractor project leader will send a short (approx. 1 side A4) progress update to the project officer once a month.
- Invoices against project milestones should be submitted to the NE project officer by email. Invoices will need to include supporting evidence relating to spend incurred (e.g. brief summary of time input, travel and subsistence incurred etc).
- The Natural England project manager will provide copies of all the relevant agreement and baseline assessment documentation once the sample has been agreed (agreement holder contact details).

### **Property rights, publication and confidentiality**

All data resulting from this project, project documents and other materials will be the property of Natural England. Any data collected will be made openly and publicly available.

Natural England and Defra intend to publish the final project report as a Defra science report. The published report will be made available on the Natural England and Defra Science websites. It is likely to be shared directly with partners as part of regular liaison over the progress of Countryside Stewardship and wider RDPE Delivery.

Natural England encourages widespread publication, and welcomes the use of appropriate trade press, peer-reviewed journals and sector-specific journals, but it is a requirement that all plans to communicate outcomes, including publications and oral presentations, from funded research are agreed with the project manager (who will ensure Natural England and Defra QA requirements are met) at least 2 weeks before publication or presentation. The appointed contractor is also to be aware that Natural England and Defra request acknowledgement in the publication of their funded research.

The Contractor(s) will be responsible for ensuring the quality of the work (e.g. proof reading, ensuring clear English), the presentation of the final report and any other material to be published.

### **Resources**

- The project is expected to start on 13 September 2021 and finish no later than 22 March 2022. Bidders are reminded that cost is one of the factors that will be considered when assessing bids.
- Research contracts are let on a firm price basis (excluding VAT). This is an all-inclusive price for the contract and, so long as the scope of the contract remains the same, it is not subject to any review, amendment or alteration.

In addition, this project will be paid by achievement of milestones. However, not all milestones need to be associated with payment; and it may be appropriate to include additional milestones that are not related to payment but are used to indicate progress within the project. The frequency of milestone payments should be determined by the contractor, however, we request that they are appropriate and not at a frequency greater than every month.

### **Additional Information**

Natural England is happy to encourage widespread publication, and welcomes the use of appropriate trade press, peer-reviewed journals and sector-specific journals. The contractor will be responsible for ensuring both the quality of the work as well as the presentation of the material (e.g. proof reading, ensuring clear English). The contractor is also to be aware that Natural England requests that all

publication (including oral presentations) of its funded research is notified to the project manager at least two weeks before publication.

## **IPR and data sharing**

All data resulting from this project, project documents, Intellectual Property Rights and other materials will be the property of Natural England.

To facilitate the project aims, Natural England's Data Services team will liaise with the successful contractor to generate a contractor data licence. The contractor will be responsible for applying to and liaising with the Data Services team in requisite time in order to obtain the necessary data. The project officer will assist in this and make a preliminary enquiry on behalf of the project but, following outline approval the successful contractor(s) will be required to provide a full data request as required to meet the detail of their tender.

Data will be supplied to the successful contractor via secure data sharing in a format to be agreed with the contractor and Natural England's data services / GIS team.

All information provided to the contractor for the purposes of this project, shall be kept securely, confidentially and disposed of at the end of the project. It must not be used elsewhere without prior consent. The supplier will be required to follow Natural England's data protection policy and only act on information provided under our instruction.

## **Survey Requirements**

As surveys are to be undertaken as part of this study, approval will need to be gained from the Survey Control Liaison Unit (SCLU) in Defra. Any structured approach made by or on behalf of the Government in order to obtain aggregated data is classed as a statistical survey and should be referred to Defra's Survey Control Liaison Unit (SCLU). This also applies to customer satisfaction surveys.

Natural England and Defra are strongly committed to minimising the burden they place upon businesses and local authorities. As a result proposals for new surveys must be assessed by the Survey Control Liaison Unit (SCLU). In order to undertake the survey of agreement holders, proposed as part of this project, approval will need to be gained from the SCLU. Natural England will make the initial application, but, following outline approval the successful contractor(s) will be required to provide a draft questionnaire to be agreed and approved (notes about survey and questionnaire requirements are included in Annex 1). **A period of at least 6 weeks** should be built into the project plan to accommodate this survey approval process.

**It is the responsibility of the successful bidder to ensure that the survey is provided in accordance with the time requirements of this project for SCLU approval**

## **England Marketing Response: E03 – Approach and Methodology**

### **BACKGROUND AND CONTEXT**

Permissive access options offering financial incentives to farmers/landowners in exchange for offering access to their land for public recreational use formed an element of agri-environment schemes until late 2010, after which funding was withdrawn and no new agreements were put in place, although live agreements continued to run, the last of these ending in 2020/2021.

Whilst farmers/landowners were asked consider continuing the permissive access scheme on a voluntary basis, there is currently no significant indication of how many chose to do this, and it is presumed that many stopped providing access, which is supported by reports from members of the public.

With the Environmental Land Management Scheme projected to come into full use in 2028, and aspects such as the provision of public goods and access forming a basis for some payment options, Defra/Natural England would now like to determine how many permissive access routes remained open following the termination of HLS agreements. This will inform their consideration of options for access provision payments as parts of ELMS in order to ensure that value for money is achieved, and that the openness of farmers and land managers to provide public access is understood.

An additional scheme, Paths for Communities, used Rural Development Programme funding to develop and enhance public paths, with the aim of extending the network of public rights of way and making them more accessible. The status of Paths for Communities routes is currently unknown, and Defra/Natural England would now like to understand if, and how, the routes are being maintained. This assessment will form a small section of the eventual report and is designed to be used as a comparison to permissive access provision.

### **AIMS AND OBJECTIVES**

The aims and objectives of this research are as follows:

- To determine how much voluntary permissive access provision is in place following the end of HLS permissive access agreements and understand the reasons for landowners/managers either continuing or discontinuing permissive access provision.
- Assess the current status of Paths for Communities agreements and the involvement of those who were/are part of them.
- To use the above data to form opinions regarding the value for money of public access provision to help inform ELMS options development.

### **APPROACH**

England Marketing would create a survey, as outlined in more detail below, gathering insights from farmers and land managers as to their experiences of the Paths for Communities and HLS permissive access schemes, the current status of the land they previously offered access across, the types of access offered, their appetite for continuing to offer access/resuming offering access, and their reasons for/against offering permissive access routes across their land.

We have outlined three different packages of research below, tiered according to pricing, which we would suggest depending on the budget available for this programme of research.

The survey we would undertake would remain the same for all packages, but the delivery format and additional qualitative data gathering would change according to the package chosen.

Defra/Natural England have outlined 200 responses as being the desired minimum to achieve from the database of c. 1,200 HLS contacts. However, we would recommend a minimum of 300 responses from a variety of farming sectors, backgrounds and operations to ensure a statistically significant and

representative sample to a 95% confidence level (+/- 5%) and have shaped our approach and the associated breakdown of costs accordingly. If Defra/Natural England wished to gather a sample of 200 the proposed approach and methodology would remain the same, but our pricing would change proportionally to be reflective of the lower time commitment required.

For the Paths for Communities survey, Defra/Natural England have outlined that they have c. 50 contacts who participated in this scheme. We would need to achieve a sample of 45 from this sample in order for the data gathered to be representative and statistically significant to a 95% confidence level (+/- 5%).

We would achieve the required number of responses using the database of contacts for HLS and Paths for Communities agreement holder supplied by Defra/Natural England. Based on a working farm, and with strong links to the industry, England Marketing also possesses our own panel of over 300 farmers, as well as an owned database of 2,000+ farmer contacts, which we could utilise should it be necessary to achieve the required number of responses. Additionally, we would advise advertising the survey through industry-specific publications, on the Natural England website and via sector-based social media communities, and our own contacts within industry groups and organisations (Country Land & Business Association, Anglia Rural Consultants, and Women in Food and Farming, for example) should additional responses be required. We have a team with backgrounds in marketing and communications with campaign experience, as outlined in the 'Our Team' section of this proposal, who would support the design and delivery of these materials.

To ensure that we achieve the desired number of responses for a statistically significant sample, we would propose offering a minimum incentive of a prize draw of 5 x £100 Amazon vouchers, or a charity donation in the winning respondents' names, to be offered as an incentive to encourage more responses.

### **The Survey**

We would work with Defra/Natural England to develop a survey for both HLS and Paths for Communities agreement holders that obtains the necessary information from respondents in order to be able to build a full picture of the current and future situation around permissive access agreements.

Depending on the preferences of Defra/Natural England, we could either design a single survey that could be routed and analysed according to whether respondents were HLS agreement holders or involved with the Paths for Communities scheme, or we could design two separate surveys, with the acknowledgement that they would be very similar in terms of content. The survey(s) would include questions on:

- Demographic data for respondents where it is not already held. This could include: age, gender, geographical location, job title/role, length of time farming/working within their sector, type of farm (where relevant), specific industry (where relevant), size of farm/company, crops grown (where relevant), succession plans.
- Their experiences of being HLS agreement holders and offering permissive access across their land/being involved with the Paths for Communities scheme.
- When their HLS permissive access/Paths for Communities agreements expired.
- Whether they currently maintain permissive access routes/public rights of way (PROW) on their land.
- If they do not currently maintain permissive access routes/PROW on their land, when they ceased to do so and why (i.e. whether it was solely related to the agreement expiring).
- How they currently manage permissive access routes/PROW (if any) on the land they farm and/or manage.
- Whether there is any appetite to continue/reinstate permissive access routes on their land a voluntary basis.
- What would encourage them to commit to greater maintenance and development of PROW than what is legally required on their land.
- What the perceived benefits of permissive access routes/maintaining PROW are for them.

- Whether they are interested/disinterested in offering permissive access routes and the reasons behind their answer.
- The barriers they face when it comes to offering permissive access routes/maintaining PROW, how they might overcome these if they are surmountable, and whether additional support could be offered (i.e. financial, advisory etc.),<sup>3</sup> and from which bodies, to encourage them to do so.
- How they feel about permissive access/PROW on their land, and the importance they place on it compared to, or in relation to, other “public goods” such as soil and water quality, biodiversity etc.
- Their attitudes and opinions towards the previous HLS/Paths for Communities schemes and the support that they offered.
- Whether they would like more communication around offering permissive access/maintaining PROW on their land, and how they would like to be communicated with.

We would route the survey according to responses in order to probe particularly positive or negative feelings and gather more valuable and in-depth data on these aspects. In the interests of delivering value for money, and assuming either the Silver or Gold packages are opted for, our experienced interviewers would probe the sub sample of respondents who respond via telephone for more in-depth responses to gather valuable qualitative data around motivations/reasons for discontinuing during the initial interview to gather survey responses. We can offer focus groups, discussion workshops, or additional one-to-one interviews should this be felt to be required but would aim to gather this valuable qualitative data through the initial telephone response gathering to the survey to ensure value for money is delivered. We could also attach quotas to survey responses in order to ensure a proportional representation of farm/land types, sizes and geographical locations.

### **Bronze Option**

This basic package of research would consist of an online survey, sent out to farmers and landowners/managers from the Defra/Natural England contact lists.

The benefit of online distribution is that it allows respondents to complete within their own time and enables us to reach a wide audience with a relatively low commitment in both time and budget. However, responses gathered purely through online means tend to be biased and self-selecting, as responses are gathered solely from those who actively seek to respond and, therefore, tend to be those with the strongest opinions. Additionally, gathering responses through online means only can make it difficult to target specific groups, or to ensure an equal spread of respondents with different types of farming operations, or from different UK regions and different types of land/countryside. Additionally, online only responses negates our ability to gather valuable additional qualitative data using interviewing techniques to probe respondents' answers to questions.

### **Silver Option**

This mid-tier package would consist of the survey and desk-based research, with responses being gathered both online and via telephone interviews conducted by our experienced researchers.

The benefits of combining online and telephone distribution are that cost-effectiveness is maintained, with a lower time and budgetary commitment required to achieve the 300 responses necessary to provide a representative and statistically significant sample, without sacrificing the ability to target responses where required in order to ensure that the sample is representative. Conducting half the interviews via telephone also means that those who participate are not just those with the strongest opinions, meaning the insight gathered is less biased and provides a more factual overview of the situation within the industry. Additionally, telephone interviews allow our experienced researchers to gather valuable qualitative insights by probing respondents' answers to their questions and drawing out more information than would generally be gathered through purely online surveys, the quality of which can be affected by factors such as respondents' “speeding”, leading to a lack of accuracy and detail in their answers.

Having the survey running both online and via telephone allows us a significant degree of flexibility when gathering responses, as often farmers/landowners/land managers who are busy when we call them will request a link to complete the survey online, allowing us to gather more responses than if the survey is purely telephone based.

## **Gold Option**

Our top tier package, this would entail all the survey responses being gathered by telephone.

Obtaining survey responses entirely through telephone interviews would provide a significant degree of control over the types of respondents targeted, the quotas and sampling achieved and provide a great degree of depth and accuracy in the responses provided by those being interviewed. Over 50% of our team have a background in agriculture, meaning they are well-placed to interview farmers/landowners or land managers in an informed and knowledgeable fashion, meaning they know when to probe for greater depth in responses and can gather additional, valuable qualitative data that lends itself to building an even more detailed picture of sector attitudes and forecasting.

Our team work flexibly, and we are able to accommodate requests for calls out of hours, understanding the farmers/land managers are often too busy during the working day to be in a position to respond in depth. However, solely telephone-based surveys do require a significant time and, therefore, budgetary commitment in order to achieve a representative sample, in this case 300 HLS respondents and 45 Paths for Communities respondents.

## **Recommended Approach**

Bearing in mind potential budgetary constraints and the need to deliver value for money without sacrificing the quality of output, our recommendation would be that the 'Silver' package would offer the best value whilst achieving the highest quality and most accurate targeted responses and additional qualitative data and in-depth discussion.

## **Reporting**

Our data led approach ensures that data science with a focus on the project objectives is at the heart of the project approach. We have in-house data scientist and over 25 years of analytical reporting experience.

As standard, we will conduct a question-by-question analysis across all respondent data, providing you with an in-depth knowledge of opinions within the sector. In order to develop insight on the objectives and provide you with accurate, detailed recommendations, we will cross examine the output with a number of statistical tests. As well as allowing us to respond to the objectives, this also means that we can identify additional nuances, outliers and things that may need further investigation, so you can be sure that you're getting the full picture.

Our reporting will be broken down according to demographic data we collect from respondents in order that we can cross-tabulate responses and identify and compare trends and attitudes between different groups.

At the beginning of the project, on acceptance of our proposed approach, we will undertake a scoping meeting and subsequently produce a research brief that will confirm the objectives, audiences and approach, including any scope changes issued after the proposal was received, to ensure our reporting is output tailored to your needs.

Our research is purpose-led and our project managers have campaign experience at a national level so are aware of the value research can add to market strategy development and where it can be exploited to achieve the best results. When we write a report, our aim is that it will be a document that is continually referenced and used. As a result, we offer a range of formats according to what will work best for you - presentations, pdfs or audio/visual delivery, a combination of which will be used to deliver the results of this research.

The draft report will be submitted for peer review by two contacts nominated by England Marketing and approved by Natural England. Natural England will be invited to have oversight of the feedback and recommendations borne from the peer review, and will be invited to approve the resulting version of the report prior to its finalisation and presentation to the wider organisation and externally to a larger audience.

## **Proposed Outputs**

The proposed outputs for this project are:



- One client/consultant briefing session at the start of the project.
- Initial report outlining survey question and analytical methodologies to be used to be submitted to Defra's SCU for approval.
- Online and telephone-based survey.
- Desk-based review of previous survey findings and associated literature including comparison to survey findings from this project to identify trends and changes.
- Collection and analysis of new primary data.
- Presentation of findings and consultation on draft report for client.
- Anonymised raw data in csv format.
- Production of a full, evidenced-based report critically examining data collected and suggesting methods of addressing any issues identified and offering strategic recommendations.
- 2-page summary document detailing key outcomes and conclusions.
- Infographic outlining key results.
- Presentation of findings to key members of Natural England/Defra via webinar.

### **Why Choose England Marketing?**

England Marketing has been established for over 26 years, working primarily in the food, agriculture and heritage sectors. Our ability to question results, whether that means we adopt agile methodologies, interrogate data sets or delve that bit deeper into a behavioural trait means that we can uncover far more insight than standard research practices would allow.

We have put together a multi-discipline team, this means that while they are researchers first, they also have experience of other sectors, industries and strategic methodologies that sit outside of the field of research.

We understand how the insights gained through effective research will deliver a better understanding of your consumer behaviours, helping to shape changes in your messaging and product offering for a positive impact on your brand and your sales. This means that when we question the answers we get, we have the bigger picture in mind, not just the end of the research report.

Our multi-skilled team means that we're equipped to support you throughout the entire project, from research through to strategic recommendations based on our analysis insights. We undertake audience profiling, product development and market insight reporting and pride ourselves on having a creative and knowledgeable approach that you wouldn't find elsewhere.

Working on research within the agriculture, land management, and sustainability sectors is at the core of what we do. Clients to have benefited from our expertise in engaging with those working within these sectors in the last year have included:

- Bayer Crop Science
- NFU
- BASIS
- McArthur Agriculture
- NIAB
- Ecospray
- ARC
- Hutchinson's
- AIC
- Springfield Agri

In most cases the work has involved surveying farmers and industry professionals to understand their current set-ups and situations, the effect of changes to regulations within the sector on them and their operations, the effects of wider external factors on them and their operations, the support they feel is required, what they are satisfied/dissatisfied with, the external influences they would like to see offering more support to the industry and the challenges, "pain points" and barriers to development that they are encountering. This information is used to understand the overall feeling and picture within the industry, with a mind to shaping future growth, development and forecasting in a strategic way.

In addition to our consumer panel of 2,000 consumers, located across the UK, we hold a fully GDPR compliant database of around 2,000 farmers with whom we communicate for projects like these. With our offices situated on a working farm and over 50% of our team having a background in farming and agriculture, we are well-placed and well-respected within the industry. Our MD was involved with a public enquiry regarding access to a bridleway on their family farm, and, therefore, has a deeper insight into the issues land managers may face.

We put our background in marketing and strategic comms to work in all our communications and project work, which is why we manage engagement rates that are consistently tracking at 60% compared to an industry average 21%. This approach has also led us to have a 45% survey response rate, compared to an industry average of between 10 and 20%. Over 80% of survey starters make it to the end of our surveys. This means that our turnaround times work in hours and days, not weeks and months.

## England Marketing Response: E04 – Understanding of need

### Proposed Timeline

Our proposed schedule of timings for each week commencing can be found below. These are to be confirmed and finalised on initial project scoping and briefing with Natural England (NE) should we be awarded the contract. These include 6 x milestone meetings with the PSG team, to be held during the weeks for the project kick-off, initial survey report, literature review submission, results review on survey close, first draft report submission after peer review, and final draft report submission and sign-off.

	25/07	01/08	08/08	15/08	22/08	29/08	05/09	12/09	19/09	26/09	03/10	10/10	17/10	24/10	31/10	07/11	14/11	21/11	28/11	05/12	12/12	Xmas Closure	Xmas Closure	02/01	09/01	16/01	23/01
Project scoping meeting																											
Production and submission of project brief to Natural England project team for approval																											
Desk-based literature review																											
Survey design and construction + production of initial report																											
Initial report, including survey questions and methodology submitted to Natural England project team for approval																											
Initial report submitted for approval by Defra's SCU																											
Database collation and sample identification																											
Survey live (once approved - latest possible date projected)																											
Online/telephone fieldwork																											
Interview/survey analysis																											
Reporting																											
Draft final report submitted to Natural England project team																											
Report submitted for peer review																											
Feedback from peer review received																											
Final report edits and production																											
Presentation of final draft to steering group																											
Production of 2-page summary and infographic to Steering Group																											
Presentation of 2-page summary and infographic to Steering Group																											
Webinar preparation (TBC)																											
Presentation of webinar (TBC)																											

### Project Management and Communication

England Marketing would be the sole contractor. We would conduct a project scoping meeting with NE within a week of contract award to finalise the approach and desired outputs. A dedicated Project Manager would be assigned to the project to liaise with the NE team for the whole lifecycle. A project briefing document would be produced and sent to NE for approval. Once approved, the briefing document would provide the guide for the research and its desired outputs.

A monthly single-sided A4 page summarising progress would be sent, with additional communication according to project need. Six Project Steering Group meetings would take place online, via Teams, with England Marketing supplying a record of the minutes from each meeting. All reports are reviewed internally by at least 2 separate members of the England Marketing team before submission to the client.

We generally invoice at 50% upfront, with the remaining 50% payable upon successful completion of the project and finalisation and approval of the report, this could be altered, if required, on discussion with the NE project team.

## Project Team

CVs outlining the relevant experience of the project team can be found separately at [Appendix 1](#) (N.B. the portal did not allow us to upload an additional document for this). The project team will consist of:

[REDACTED]

## Risks and Mitigations

Identified risk	Likelihood of risk (high, medium, low)	Impact of risk (high, medium, low)	Risk management strategy
England Marketing staff absence/sickness	High	Low	This would be unlikely to impact the project as we have an internal project management system so that all project progress is up-to-date and able to be picked up by another member of the team.
Low uptake causing difficulty in achieving the required sample	Medium	Medium	Incentives being offered will increase survey uptake. We could advertise the survey in industry publications and via our own network in order to increase uptake, if necessary.
GDPR breach	Low	High	All our research is undertaken according to the MRS Code of Conduct. We are registered with the Information Commissioner for Data Protection (Z8935684) and our team are fully trained in GDPR compliance. The database being used is supplied by Natural England/Defra and assumed to be fully compliant.

## Quality Assurance and Compliance

We are registered with the Information Commissioner for Data Protection (Z8935684) and adhere to the Market Research Society Code of Conduct and their Fair Data Policy. We are fully GDPR compliant and have an appointed Data Protection Officer. All staff have been trained on GDPR guidelines. England Marketing has a sophisticated data back-up system and fully supported IT systems, with all our IT requirements managed by a specialist consultancy who are ISO 9001 certified for Quality Management and ISO 27001:2013 certified for Information Security. We have a full-service Recovery Plan in the event of a major systems failure. We have held Investors in People status since 2004 and have held ISO 9001 since 2010 and are fully accredited to ISO 9001 : 2015. ISO 9001 contains a set of Quality Principles, which include customer focus, leadership, engagement of people, process approach, continual improvement, evidence-based decision making, and relationship management.

## Appendix 1

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# SCHEDULE 2 - PRICES

Table 1. Cost Breakdown

Total Cost (exc VAT): £25,100

Total Cost (inc VAT): £30,120

\*Price will subject to VAT at 20%.


No.	Item	Number of days input for each project member	Each staff cost excluding VAT	Travel and subsistence (as per rates below)	Staff Grade	Total price (ex. VAT) £
1	Literature Review					
2	Sample Identification					
3	Construction of interview/survey					
4	Interviews/surveys Implementation and completion (Price per 30 – online or telephone)					
5	Interview/survey analysis. Reporting					
6	Final Report including summary and infographic					
7	Webinar Preparation and Delivery					

8	Peer review	■	■■■■■ ■	■	■	■■■
9	Presentation of webinar	■■■	■■■■■ ■	■	■	■■■
10	Project Management	■	■■■■■ ■	■	■	■■■■■
11	Incentives	■■■	■■■	■■■	■■■	■■■
9	<b>Total exc VAT</b>					■■■ ■■■■■ ■■■ ■■■■■ ■■■■■  ■  ■■■ ■■■■■ ■■■ ■■■■■ ■■■■■ ■■■ ■■■■■ ■■■■■  ■  ■■■ ■■■■■ ■■■■■ ■■■■■

## 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:

Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX  
[foi@naturalengland.org.uk](mailto:foi@naturalengland.org.uk)

The Defra group Data Protection Officer is responsible for checking that Natural England complies with legislation. You can contact them at:

Department for Environment, Food and Rural Affairs, SW Quarter, 2nd floor Seacole Block, 2 Marsham Street, London SW1P 4DF

[DefraGroupDataProtectionOfficer@defra.gov.uk](mailto:DefraGroupDataProtectionOfficer@defra.gov.uk)

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

England Marketing Ltd  
The Research Hub, Fenside Road, Warboys, Cambridgeshire, PE28 2XR

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

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

Data Processing Descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor in accordance with Clause 10.3.
Subject matter of the processing	An evaluation of Post-Agreement Higher-Level Stewardship (HLS) Permissive Access Provision
Duration of the processing	The processing will be for the duration of the contract ecm_65548
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.
Type of Personal Data	Name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.

Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Provider will store relevant personal data in an electronic file, specific to the programme, in its central document management system which is stored, backed up and supported within the UK. Some hard copy documentation may also be stored in a physical matter file in the UK. Relevant personal data will be retained in accordance with the Provider's Physical Records Retention Policy, which specifies a standard retention period for 6 years after termination or expiry of the Contract.</p>