**Maldon District Council**

**- and –**

**Agreement relating to –**

**The delivery and collection of Speed Limit Buoys throughout the Blackwater Estuary (including the waters surrounding Mersea Island)**

**Maldon District Council**

**Princes Road**

**Maldon**

**Essex**

**CM9 5DL**

**Tel – 01621 875837**

**Eight Knot Speed Limit Buoy Contract**

**THIS AGREEMENT** made the day of two thousand and fifteen

**BETWEEN** MALDON DISTRICT COUNCIL of Princes Road, Maldon, in the County of Essex (“the Council”) and

of(“the Contractor”)

**WHEREAS** the Council wishes to have certain services carried out by the Contractor namely the collection and delivery of speed limit buoys throughout the Blackwater Estuary (including the waters surrounding Mersea Island) in accordance with this Agreement (“the Service”)

**NOW THIS AGREEMENT WITNESSETH** as follows:-

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Council’s Conditions of Agreement hereinafter referred to
2. The following documents and their annexures shall be deemed to form and be read and construed as part of this Agreement namely:-
3. The Contractor’s Tender dated 2015
4. The Council’s letter of acceptance dated 2015
5. IN CONSIDERATION of the payments to be made by the Council to the Contractor as hereinafter mentioned the Contractor hereby agrees to carry out the Service and also to remedy any defects therein in conformity in all respects with the provisions of this Agreement.
6. The Council hereby covenants to pay the Contractor in consideration of the completion of this Agreement at the Contract Price at the times and in the manner prescribes in this Agreement.

**IN WITNESS** where of this document has been sealed by parties hereto as a deed the day and year first before written

The COMMON SEAL of MALDON DISTRICT COUNCIL was hereunto affixed in the presence of:-

The COMMON SEAL of was hereunto affixed in the presence of

Chairman

Chief Executive

Director

Director/Company Secretary

COUNCIL’S CONDITIONS OF AGREEMENT

**1. DEFINITIONS OF EXPRESSIONS**

1.1 In construing these Conditions the following words shall have the meaning herein assigned to them unless there is something in the subject matter or context inconsistent with such construction

The “Council” shall mean Maldon District Council (MDC) and shall include the Council’s legal personal representatives, successors and assigns

The “Contractor” shall mean and shall include the Contractor’s legal personal representatives, successors and assigns

The “Tender” shall mean the Contractor’s tender dated the day of 2015 for the Service

The “Letter of Acceptance” shall mean the Council’s letter of acceptance dated the day of 2015 accepting the Contractor’s tender for the Service

The “Agreement” shall mean the agreement between the Council and the Contractor for the Service including all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under this Agreement

“Commencement Date” shall mean the 21st day of March 2016

The “Contract Period” shall mean the period of five (5) years thereto granted to the Contractor by the Council in accordance with this Agreement

The “Contract Price” shall mean the sum named in the Tender for each season that the Service is carried out by the Contractor during the Contract Period and which will be payable in accordance with this Agreement

The “Supervising Officer” shall mean Richard Holmes or such other officer as the Council may appoint

The “Certificate of Completion” shall mean the date on which the Authorised Officer certifies that the appropriate element of the Service has been completed in conformity with this Agreement

“Service” shall mean the collection and delivery of speed limit buoys throughout the Blackwater Estuary (including the waters surrounding Mersea Island) in accordance with this Agreement and all in documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under this Agreement

The “Location” shall mean the position of the speed limit buoys as detailed on Appendix A annexed hereto or such other positions as may be agreed in writing between the partied hereto during the Contract Period

“Delivery Period” shall mean no later than the second week of April of each year and not before the first day of April each year during the Contract Period

“Collection Period” shall mean no later than the second week of October of each year and not before the first day of October each year during the Contract Period

The “Season” shall mean the dates between the Delivery Period and the Collection Period for each year during the Contract Period

“Buoys” shall mean the eight knot speed limit buoys including their ground tackle collected by the Contractor from the premises agreed by the River Bailiff

“Risk Assessment” shall mean a Health & Safety Risk Assessment identifying all hazards and risk involved in carrying out the Service

Supervising Officer detailing how the hazards and risks identified in the Risk Assessment are to be controlled

“Recommendations” shall mean the recommendation made by the Supervising Officer in relation to the Method Statement and any other recommendations made by the Supervising Officer in relation to Health & Safety

**2 RESPONSIBILITES OF THE CONTRACTOR**

2.1 The Contractor shall throughout the Contract Period carry out and completed the Service in conformity in all aspects with this Agreement

2.2 The Contractor shall prior to the Delivery Period collect the Buoys from a location to be confirmed by the Supervising Officer and deliver and install them to their respective Locations during the Delivery Period and thereafter shall ensure that the Buoys remain in their respective Locations during the Season. This work shall be carried out on a weekday and not a Saturday or Sunday unless agreed prior to commencement of the work by the Supervising Officer. Any Buoys which are off station shall be replaced on the next convenient tide in accordance with any instructions given by the Supervising Officer.

2.3 The Contractor shall collect the Buoys from their respective Locations during the Collection Period and shall thereafter forthwith return the Buoys to the Location agreed by the River Bailiff in the same condition as they were in prior to the start of the appropriate Season fair wear and tear being accepted by the Council. This work shall be carried out at a time agreed by the River Bailiff

2.4 The Contractor hereby agrees to supply all equipment necessary to complete the Service at no additional cost to the Council. This shall not include Chain, Rope or Shackles.

2.5 The Contractor shall appoint a project manager who will have overall Contractor responsibility for this Agreement. The Contractor will use its reasonable endeavours to retain the project manager and any other personnel assigned to the Service for the duration of this Agreement. However the Contractor shall have the right on giving reasonable notice to the Council to substitute personnel with similar skills if for any reason part of the original project team becomes unavailable.

2.6 Without prejudice to clause 11.9 (ii) hereof the Contractor will prior to the

Commencement Date provide the Supervising Officer with a Risk Assessment and Method Statement and will forthwith carry out any Recommendations of the Supervising Officer in relation to the Risk Assessment and/or Method Statement and/or any general health and safety matters.

2.7 The Contractor shall forthwith carry out the Supervising Officers reasonable instructions in relation to carrying out the Service.

**3. RESPONSIBILITES OF THE COUNCIL**

3.1 The Council shall only in so far as is reasonable assist and co-operate with the

Contractor in the carrying out of the Service, subject to the Council being given reasonable notice of the reasonable assistance required by the Contractor. Co-operation shall be limited to the delivery or collection of small items of equipment to a location agreed beforehand with the Contractor. It shall not include manual handling or the operation of machinery, or operations afloat.

3.2 The Council shall appoint a Supervising Officer who will have overall responsibility for this Agreement. If for any reason the Council’s Supervising Officer shall cease to perform the duties described in the foregoing sentence the Council shall immediately designate another individual to perform such duties.

**4. WARRANTY**

4.1 The Contractor warrants that it shall use sound and professional principles and practices in accordance with generally accepted industry standards in the provision of the Service and that the Service will be carried out with reasonable care & skill.

**5. CHANGES**

5.1 The Council may at any time request the Contractor to make changes in the scope of the Service or to provide additional services and/or deliverables (which may be specified as new services). The Contractor shall thereafter submit to the Council in writing a proposal for implementing the request. The Contractors proposal shall as applicable state any increase or decrease in cost and/or time of completion of the Service and any other appropriate change to the Service or to this Agreement.

5.2 If the Council shall wish to implement the proposed change the Council and the Contractor shall each sign a copy of the agreed proposal through a duly authorised representative whereupon the Service and/or this Agreement shall be amended to the extent of such signed proposal.

**6. CONFIDENTIALITY**

6.1 Each party agrees that it shall not disclose to any third party any information confidential to the other including without limitation information concerning trade secrets methods processes or procedure or any other confidential business or technical information of the other party (“Confidential Information”) which it learns during the course of its performance of this Agreement without the prior written consent of the other party except to the extent that any such Confidential Information (i) is in the public domain (ii) is independently developed by the other party (iii) is already in the possession of such party prior to disclosure (iv) is rightfully received from a third party not under a confidentiality obligation to the first party or (v) is legally require to be disclosed by the receiving party.

**7. TERMS OF PAYMENT**

7.1 The Council shall pay the Contractor the Contract Price for each Season that the Service is carried out during the Contract Period adjusted to give effect of such additions thereto and deductions therefrom as provided for in these conditions subject to the issue of a Certificate of Completion by the Authorised Officer that the Service has been completed for the appropriate Season in accordance with this Agreement and Subject to the Contractor providing an invoice which details the charges properly due and payable under the Terms of this Agreement and which will be payable in full within 30 days of its receipt by the Council. Part payment may be made after each phase of the Contract has been completed to the satisfaction of the Authority if requested by the Contractor.

7.2 In the event of failure by either party to make any payment when due in accordance

with this Agreement then the defaulting party shall pay to the other party interest upon any payment overdue at a rate per annum equivalent to base lending rate plus 1% determined at the date of payment.

**8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

8.1 The Contractor will indemnify or settle at its own expense and indemnify the Council against any suit or claim against the Council alleging that any output from the Service delivered to the Council infringes any UK patent, copyright or trade secret or any other relevant legislation. In the event of such infringement the Contractor shall be entitled to substitute a non-infringing deliverable for the infringing deliverable to obtain the right to use the infringing deliverable. The Contractor’s obligations under this clause are where appropriate conditional upon:

 (a) the Council promptly notifying the Contractor in writing of such infringements

 (b) the Contractor having sole control defence or settlement of the claim

 (c) the Council, subject to payment of its reasonable expenses, shall co-operate

 with the Contractor so as to facilitate the settlement or defence of the claim,

 and

 (d) the action not arising from adherence by the Contractor to design

 specifications or written instructions which the Contractor is directed by the

 Council to follow or from the Council’s modification of any deliverables

**9. INDEMNITIES AND LIABILITIES**

9.1 The Contractor will indemnify the Council against claims for damages for death or personal injury caused as a result of the negligence of the Contractor or its employees or agents in the performance of the Contractor’s obligations under these conditions.

9.2 Without limiting the Contractor’s liabilities under these Conditions the Contractor shall

insure with some insurance office or underwriters to be approved by the Council for the sum of not less than £2,000,000 in respect of one event or series of events arising from one occurrence against loss or damage to any property belonging to or in possession of any person or injury (including injury resulting in death) to any person which may occur as a result of or arise out of the execution of this Agreement. The insurance policies shall be maintained during the continuance of this Agreement and the Contractor shall from time to time whenever required produce to the Council the policy or policies of insurance and the receipts for payment of the current premiums.

9.3 The Contractor’s aggregate liability for all claims and losses made or sustained by

the Council hereunder shall not be limited to the charges payable to the Contractor by the Council hereunder in respect of the Service.

9.4 The Council shall indemnify the Contractor against claims for damages in respect of the death of or personal injury to any employee or agent of the Contractor engaged in performing the Contractor’s obligations under these conditions caused by the negligence of the Council or the Council’s employees or agents.

9.5 The Council shall indemnify the Contractor against loss of or damage to the property

of the Contractor used in performing the Contractor’s obligations under these conditions caused by the negligence of the Council or the Council’s employees or agents.

9.6 The Council shall indemnify the Contractor against any claims by third parties which are occasioned by or arise from the Contractor following reasonable instructions of the Council or its employees

**10. DEFAULT AND TERMINATION**

10.1 If the Contractor shall fail to perform all or any of the Services strictly within the times

set out in this Agreement the Council may take alternative provision for the supply of the Services and the costs thereof and the costs of any claims and expenses arising out of such default shall be reimbursed by the Contractor to the Council with interest thereon at 5% above the base rate for the time being of the National Westminster Bank plc from the date when such cost is incurred until it is reimbursed.

10.2 The Council may terminate this Agreement during the Contract period by written notice to the Contractor should the Contractor fail to perform any of its material obligations hereunder and fail to remedy such failure within 7 days from the receipt of written notice of failure to perform. Provided always that the right of termination shall be without prejudice to any other rights or remedies which either party may possess against the other.

**11. GENERAL**

11.1 This Agreement shall be governed by the laws of England and constitutes the entire

Agreement between the Council and the Contractor. No representation or statement not expressly contained in this Agreement or incorporated herein by written reference shall be binding upon the Contractor or the Council whether as a warranty or otherwise. Both the Contractor and the Council hereby submit themselves to the jurisdiction of the English Courts in connection with this Agreement.

11.2 Any notice or consent or other communication required to be given under the provision of this Agreement by either party to the other shall be made in writing and shall be sent by recorded delivery to the addresses given for each party on page 1 of this Agreement and shall be deemed to be received by the other party 48 hours from the time of posting, subject to proof of posting.

11.3 This Agreement and any documents incorporated herein shall constitute the entire

agreement between the Contractor and the Council relating to the subject matter of this Agreement. The terms and conditions in this Agreement shall prevail notwithstanding any conflict with any of the details which may appear on any purchase order submitted by the Council or in any proposal/terms of engagement or similar document prepared in connection herewith.

11.4 No delay neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

11.5 Clause headings are inserted for convenience of reference only and shall have no

effect in construing this Agreement. The clauses and sub-clauses hereof shall be construed separately and if any clause or sub-clause is held to be ineffective the remainder shall nevertheless continue in full force and effect.

11.6.1 Subject to clause 11.7 the Contractor shall not assign or sub-let all or any part of its obligations hereunder without the prior written consent of the Council (such consent to be at the absolute discretion of the Council).

11.6.2 The Council may assign this Contract to a third party with the prior consent of the Contractor (such consent not to be unreasonably withheld or delayed) and the Contractor undertakes to execute without delay a formal deed of assignment of this Agreement.

11.7 The Contract may with the prior written approval of the Council (such approval to be at the absolute discretion of the Council) employ a Sub-Contractor(s):

i) The Council’s consent to sub-contract shall not relieve the Contractor from any liability or obligation under this Agreement and the Contractor shall be wholly liable for the acts defaults and neglects of any Sub-Contract as if they were the act default or neglect of the Contractor.

ii) The Contractor shall be wholly responsible for ensuring that any Sub-Contractor observes the relevant conditions of this Agreement.

iii) The Contractor shall ensure that any Sub-Contractor’s undisputed invoices are paid within 30 days of receipt and that this condition is passed through the whole supply chain.

11.8 For the term of the Contract and for a period of six months thereafter neither party shall without the prior written consent of the other party directly or indirectly entice with a view to employment or solicit the employment of any person who is or has been employed in the performance of such other party’s obligations hereunder.

11.9 i) The Contractor shall comply with all laws rules and regulations of government

municipal or other government authorities and any bodies which are now or may in the future become applicable to the Contractor and the Contractor’s business equipment and personnel engages in services covered by this Agreement or arising out of the performance of such services and shall ensure that its personnel observe and comply with all such laws rules and regulations.

 ii) The Contractor shall in carrying out this Agreement observe and comply with

the Council’s Safety Regulations as amended from time to time and shall use its best endeavours to ensure that its personnel observe and comply with the said Regulations. In particular and without prejudice to any other requirements of the Council’s Safety Regulations the Contract shall comply with all safety health and welfare measures required under or by virtue of the provisions of any enactment or regulation including the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1992 etc and as amended or the working rules of any industry so far as they apply to this Agreement and shall include within the charges for all such costs incurred.

 iii) Subject to clause 9.5 the Contractor shall be solely responsible for the safety

of all equipment and materials and for ensuring that all such equipment comply with all bylaws and regulations relating thereto.

 iv) The Contractor shall advise the Council’s Supervising Officer immediately of

any untoward occurrences accident or injury to any person or any loss of or damage to property of a third party or of the Council. Confirmation shall be given in writing as soon as possible and in any event no later than 1 (one) working day after the event.

11.10 The Council will be empowered to rescind this Agreement and recover from the Contractor the amount of any loss resulting from such Cancellation:

 i) if the Contractor shall have offered or given or agreed to give any person any

gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or any other Contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to any person in relation to this Agreement or any other agreement with the Council: or

 ii) if the like acts shall have been done by any person employed by the

Contractor or acting on the Contractor’s behalf (whether with or without the knowledge of the Contractor); or

 iii) if in relation to any contract with the Council the Contractor or any person

employed by the Contractor or acting on the Contractor’s behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972, or as amended.

11.11 The undertakings warranties and indemnities contained in this Agreement shall survive the termination or expiry of this Agreement.

 11.12 The Contractor shall be deemed to have examined these Conditions with such other

documents and drawings that are annexed thereto or referred to therein.

11.13 The Service shall be completed to the reasonable satisfaction of the Supervising Officer throughout the Contract Period.

11.14 The Service and all work to be done under this Agreement shall be manufactured and executed in the manner set out in this Agreement or where not so set out to the reasonable satisfaction of the Supervising Officer.

11.15 If the Contractor shall become bankrupt or insolvent or having a receiving order made against them or compound with their creditor or being a corporation commence to be wound up not being a members’ voluntary winding up for the purpose of reconstruction or amalgamation or carry on its business under a receiver for the benefit of its creditors or any of them the Council shall be at liberty either:

 a) to terminate this Agreement forthwith by notice in writing to the Contractor or

to the receiver or liquidator or to any person in whom this Agreement may become vested

 b) to give such receiver liquidator or other person the option of carrying out this

Agreement subject to them providing a guarantee for the due and faithful performance of this Agreement up to an amount to be agreed.

11.16 All instructions and orders to the Contractor shall except as herein otherwise provided by be given by the Supervising Officer.

 11.17 At the end of each Season the Authorised Officer shall provide a Certificate of Completion which will state the date on which the appropriate element of the Service had been completed, subject to the appropriate element of the Service being carried out in accordance with this Agreement.

11.18 Should anything appear to be omitted from these Conditions which is fitting and usually considered necessary to be done for the completion of the Service or that is reasonably and obviously to be inferred therefrom the Contractor is to execute the same as if it had been distinctly specified in these Conditions and shall supply all materials and do everything necessary to complete the Service.