



Department
for Environment
Food & Rural Affairs

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[REDACTED]
Built Intelligence Ltd
[REDACTED]

Your ref: ecm_59871
Our ref: Project_30314
Date: 2nd December 2020

COMMERCIAL IN CONFIDENCE

Dear [REDACTED]

**Contract for the supply of NEC4 Training on behalf of
Environment Agency**

Following your tender for the supply of NEC4 Training to Environment Agency, we are pleased to award this contract to you.

The Conditions of Contract-Services set out the terms of the contract between Environment Agency as the Authority and Built Intelligence Ltd as the Contractor for the provision of the Services.

The contract is awarded for an initial period of 3 years, from 2 December 2020 to 1 December 2023. There are two (2) further twelve (12) month extension options available, subject to business requirement, satisfactory performance and price negotiation. Contract extensions if exercised must be agreed in writing by both parties before any services can commence and invoices can be submitted or paid.

Payment

Our preference is for all invoices to be sent electronically, quoting a valid purchase order number (PO Number), to eaprocurtopay@gov.sscl.com. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant

invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [REDACTED]

This contract will be managed on behalf of the Environment Agency by [REDACTED]
[REDACTED] The contract reference and title given above should be quoted on all correspondence.

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. The Authority would be grateful if you could arrange the contract to be executed, by way of electronic signature, on behalf of Built Intelligence Ltd within 7 days by Wednesday 9th December 2020.

Yours sincerely

Execution of this Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000.

[REDACTED]



Environment
Agency

Conditions of Contract Services

October 2019

1. DEFINITIONS

1.1. In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.1. Agency

The Environment Agency, its successors and assigns.

1.1.2. Agency Property

All property issued or made available for use by the Agency to the Contractor in connection with the Contract.

1.1.3. The Appendix

The Appendix to these Conditions.

1.1.4. The Contract

These Conditions including the Appendix, any Special Conditions, Specification, Pricing Schedule, Contractor's tender, acceptance letter and any relevant documents agreeing modifications exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.

1.1.5. The Contractor

The person, firm company or body who undertakes to supply the Services to the Agency as defined in the Contract.

1.1.6. Contract Period

The time period stated in the Appendix or otherwise provided in the Contract, for the performance of the Services.

1.1.7. Contractor Personnel

means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under this Contract

1.1.8. Contract Price

The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the services.

1.1.9. Contract Supervisor

Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.10. Contracting Authority

means any contracting authorities (other than the Environment Agency) as defined in regulation 2 of the Public Contract Regulations 2015 (SI 2015/102) (as amended).

1.1.11. Data Protection Legislation

means: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) or GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) ("LED") and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 ("DPA 1998") and/or the Data Protection Act 2018 ("DPA 2018") to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy

1.1.12. Data Protection Schedule

The Schedule attached to this Contract describing how the Parties will comply with the Data Protection Legislation.

1.1.13. Intellectual Property Rights

All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

1.1.14. Law

means any law, 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 with which the Contractor is bound to comply

1.1.15. Notice

Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

i. fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery;

First class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.

1.1.16. Results

All things produced in performing the Services including maps, plans, photographs, drawings, tapes, statistical data, experimental results, field data, analysis of results, published and unpublished results and reports, inventions, computer programmes and user documentation.

1.1.17. The Resulting Rights

All Intellectual Property Rights in the Results that are originated, conceived, written or made by the Contractor, whether alone or with others in the performance of the Services or otherwise resulting from the Contract.

1.1.18. Permission

Express permission given in writing before the act being permitted.

1.1.19. Services

All Services detailed in the Specification including any additions or substitutions as may be requested by the Contract Supervisor.

1.1.20. Regulations

Means the Public Contract Regulations 2015 (SI 2015/102) as amended.

1.2. Except as set out above and in the Data Protection Schedule, the Contract shall be interpreted in accordance with the Interpretation Act 1988.

1.3. All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4. Any reference in these Conditions to a statutory provision will include all subsequent modifications.

1.5. All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

2. PRECEDENCE

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

- Conditions of Contract including Appendix, Data Protection Schedule and any Special Conditions;
- Specification;
- Pricing Schedule;
- Drawings, maps or other diagrams.

3. CONTRACT SUPERVISOR

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about the Contract provided such instructions are reasonable and consistent with the nature, scope and value of the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from the Contract Supervisor that is not confirmed in writing within 7 working days.

4. THE SERVICES

4.1. The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using reasonable skill, care and diligence, and to the reasonable satisfaction of the Contract Supervisor.

4.2. The Contractor shall only employ in the execution and superintendence of the Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Contractor to remove any person employed in or about the Contract who is unsuitable, misconducts himself, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission of the Contract Supervisor.

5. ASSIGNMENT

5.1. The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.

5.2. Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.

5.3. Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract.

6. CONTRACT PERIOD

The Contractor shall perform the Services within the time stated in the Appendix, subject to any changes arising from Condition 10 (Variations,) and/or Condition 11 (Extensions of time.).

7. PROPERTY

7.1. All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.

7.2. The Contractor shall keep all Agency Property in safe custody and good condition, set aside and clearly marked as the property of the Agency.

7.3. On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Agency or otherwise dispose of it as instructed by the Contract Supervisor.

8. MATERIALS

8.1. The Contractor shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his suppliers and staff whilst on the Agency's premises.

8.2. The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

9. SECURITY

9.1. The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Services, belonging to the Contractor, or Contractors staff, or sub-contractors whilst on Agency premises.

9.2. This Condition shall not prejudice the Agency's rights under Condition 15.

10. VARIATIONS

10.1. The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Services to be supplied, by written order to the Contractor provided such variations are reasonable and consistent with the nature, scope and value of the Contract.

10.2. The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

10.3. Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.

10.4. The Contractor may also propose a variation to the Services but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.

10.5. No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract. The Agency may vary the Contract to comply with a change in English Law. Such a change will be effected by the Contract Supervisor notifying the Contractor in writing.

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

10.6.1. any Contracting Authority; or

10.6.2. 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 Agency; or

10.6.3. any private sector body which substantially performs the functions of the Agency, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

10.7. Any change in the legal status of the Agency 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 Agency.

11. EXTENSIONS OF TIME

11.1. Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:

11.1.1. in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time, as in his opinion is reasonable, having regard without limitation, to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

11.1.2. in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

11.2. No extension of time shall be granted where in the opinion of the Agency the Contractor has failed to use reasonable endeavours to avoid or reduce the cause and/or effects of the delay.

11.3. Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 13 and 14.

12. DEFAULT

12.1. The Contractor shall be in default if he:

- 12.1.1. fails to perform the Contract with due skill, care, diligence and timeliness;
- 12.1.2. refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor;
- 12.1.3. is in breach of the Contract.

12.2. Where in the opinion of the Contract Supervisor, the Contractor is in default, the Contract Supervisor may serve a Notice giving at least five working days in which to remedy the default.

12.3. If the Contractor fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

13. TERMINATION

13.1. The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:

- 13.1.1. fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2.

- 13.1.2. becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.

'Termination under the Regulations'

13.2. The Agency may terminate the Contract on written Notice to the Contractor if:

- 13.2.1. the contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

- 13.2.2. the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or

- 13.2.3. The Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations

that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

14. DETERMINATION

14.1. Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).

14.2. The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

14.3. The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

15. INDEMNITY

15.1. Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any legally enforceable and reasonably mitigated liability, loss, costs, expenses, claims or proceedings in respect of:

15.1.1. death or injury to any person;

15.1.2. loss or damage to any property excluding indirect and consequential loss;

15.1.3. infringement of third party Intellectual Property Rights which might arise as a direct consequence of the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.

15.2. This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff.

16. LIMIT OF CONTRACTOR'S LIABILITY

16.1. The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:

16.1.1. the sum stated in the Appendix;

16.1.2. if no sum is stated, the Contract Price or five million pounds whichever is the greater.

17. INSURANCE

17.1. The Contractor shall insure and maintain insurance against liabilities under Condition 15 (Indemnity) in the manner and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5M (five million pounds.)

17.2. If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.

17.3. The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

18. PREVENTION OF FRAUD AND CORRUPTION

18.1. The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

18.2. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Contractor's staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Agency immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3. If the Contractor or the Contractor's staff engages in conduct prohibited by this clause 18 or commits fraud in relation to the Contract or any other contract with the Crown (including the Agency) the Agency may:

18.3.1. terminate the Contract and recover from the Contractor the amount of any loss suffered by the Agency resulting from the termination, including the cost reasonably incurred by the Agency of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Agency throughout the remainder of the Contract; or

18.3.2. recover in full from the Contractor any other loss sustained by the Agency in consequence of any breach of this clause.

18.4. The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Bribery Act 2010 (as amended), in any of its dealings with the Agency.

19. MONITORING AND AUDIT

19.1. The Contract Supervisor may inspect and examine the Services being carried out on the Agency's premises, or elsewhere at any reasonable time. Where the Services are being performed on other than the Agency's premises, reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

20. CONTRACT PRICE

20.1. The Contract Price will be paid by the Agency to the Contractor as amended by any Variations ordered under Condition 10 (Variations).

20.2. In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

21. INVOICING AND PAYMENT

21.1. Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.

21.2. If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.

21.3. If the Contractor enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due from it to the sub-contractor within 30 days from the receipt of a valid invoice.

22. INTELLECTUAL PROPERTY RIGHTS

22.1. All Prior Rights used in connection with the Services shall remain the property of the party introducing them. Details of each party's Prior Rights are set out in the Prior Right Schedule to this contract.

22.2. All Results shall be the property of the Agency.

22.3. The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.

Unless otherwise agreed in writing between the Contractor and the Agency, the Contractor hereby:

22.3.1. assigns to the Agency all Resulting Rights

22.3.2. grants the Agency a non-exclusive, non-transferable (save for the purposes of sub-licensing, reorganisation or transfer to a successor body, for the purposes of all the successor body's normal business use), irrevocable, royalty free perpetual licence to the Agency in respect of all the Contractor's Prior Rights necessary in order for the Agency to use or exploit the Resulting Rights.

22.4. The Contractor undertakes to the Agency not to use, exploit or deal with any of the Agency's Prior Rights, other than in the performance of the Contract unless the Contractor has first obtained a written licence from the Agency, in specific terms to do so.

22.5. The Agency undertakes to the Contractor not to use or exploit the Contractor's Prior Rights, save as provided in Condition 22.3.2.

22.6. The Contractor warrants to the Agency that the performance of the Services, the Contractor's Prior Rights and the Results shall not in any way infringe any intellectual property rights of any third party.

22.7. If the Contractor is prevented from carrying out his obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 13 and 14, Termination and Determination respectively.

22.8. The Contractor shall not be liable if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.

22.9. The Contractor waives in favour of the Agency its rights to object to derogatory treatment of the Results of the Work and the Contractor also agrees that he will not assert or seek to enforce against the Agency and/or any other person, firm or company any of its moral rights as defined in the Copyright Designs and Patents Act 1988 (as amended) without the prior agreement of the Agency.

22.10. The Contractor shall not be liable for any consequential losses, damage or injuries arising from third party misuse of the Results, of which the Contractor is not aware.

23. WARRANTY

The Contractor warrants that the Services supplied by him will be discharged with reasonable skill, care and diligence.

24. STATUTORY REQUIREMENTS

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

25. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY

25.1. The Contractor in the performance of this Contract should adopt a sound proactive environmental approach, designed to minimise harm to the environment, to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of single-use plastic, ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and/or the environment, and be able to provide proof of so doing to the Agency on demand.

25.2. The Agency is committed to ensuring that workers employed within its supply chains are treated fairly, humanely and equitably. The Agency expects the Contractor to share this commitment and to understand any areas of risk associated with this and work to ensure they are meeting International Labour Standards. The Contractor ensures that it and its sub-contractors and its supply chain:

25.2.1. comply with the provisions of the Modern Slavery Act 2015;

25.2.2. pay staff fair wages (and pays its staff in the UK not less than the Foundation Living Wage Rate); and

25.2.3. Implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance.

25.3. The Contractor should support the Agency to achieve its Public Sector Equality Duty by complying with the Agency's policies (as amended from time to time) on Equality, Diversity and Inclusion (EDI). This includes ensuring that the Contractor (and their sub-contractors) in the delivery of its obligations under this Contract:

25.3.1. eliminates discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

25.3.2. advances equality of opportunity between people who share a protected characteristic and those who do not; and

25.3.3. fosters good relations between people who share a protected characteristic and those who do not.

26. PUBLICITY

The Contractor shall not advertise or publicly announce that he is supplying Services or undertaking work for the Agency without the Permission of the Contract Supervisor.

27. LAW

This Contract shall be governed and construed in accordance with the Law, and subject to the jurisdiction of the courts of England.

28. WAIVER

28.1. No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.

28.2. No waiver by the Agency shall be effective unless made in writing.

28.3. No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

29. ENFORCEABILITY AND SURVIVORSHIP

29.1. If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

29.2. The following clauses shall survive termination of the Contract, howsoever caused: 13, 14, 15, 22, 23, 24, 27, 29, 30, 31, 32 and 33.

30. DISPUTE RESOLUTION

30.1. All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.

30.2. If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).

30.3. If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.

30.4. Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.

30.5. If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.

30.6. The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.

30.7. Any of the time limits in Conditions 30 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

31. GENERAL

31.1. Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.

31.2. The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

32. FREEDOM OF INFORMATION ACT

32.1. The Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 (as amended) ('Act') and the Environmental Information Regulations 2004 (as amended) (Regulations').

32.2. The Contractor agrees that:

32.2.1. All information submitted to the Agency may need to be disclosed by the Agency in response to a request under the Act or the Regulations; and

32.2.2. The Agency may include information submitted (in whole or in part) in the publication scheme which it maintains under the Act or publish the Contract, including from time to time agreed changes to the Contract, to the public.

32.3. If the Contractor considers that any of the information included in its tender, or that it has submitted to the Agency or that is otherwise contained in the Contract, is commercially sensitive, it shall identify and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. The Contractor acknowledges that if it has indicated that information is commercially sensitive, such information may still be required to be disclosed by the Agency under the Act or the Regulations. The receipt of any material marked 'confidential' or equivalent by the Agency shall not be deemed to infer that the Agency agrees any duty of confidentiality by virtue of that marking.

33. DATA PROTECTION

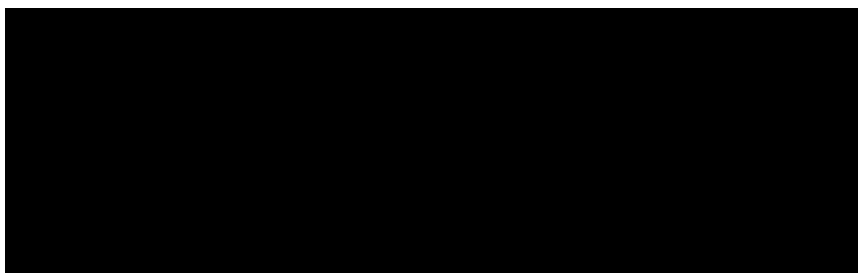
33.1. In the event that the Contract requires data to be processed within the meaning of the Data Protection Legislation the Data Protection Schedule shall be completed by the Parties and provisions and definitions therein shall apply and bind the Parties as part of this Contract.

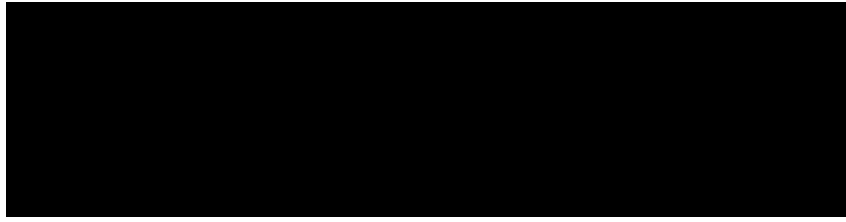
34. CANCELLATION TERMS

33.1. The Contractor will work in partnership with the Environment Agency and be flexible with regards to the postponement or cancellation of virtual/face to face courses.

We will not pay any cancellation charges for courses cancelled up to four weeks (20 working days) before the course date. We will try to reschedule any booking made.

In the event that courses are cancelled less than four weeks before the course date, the Contractor will endeavor to reschedule the booking without incurring any additional costs for the Environment Agency. Where this is not possible, the following cancellation fee schedule shall apply:





Environment Agency have an important role in responding to incidents. As a result, course attendance may have to be cancelled at short notice if an incident occurs. In addition, courses may have to be cancelled at short notice where the Environment Agency has significant concerns regarding the safe delivery of a course. In these instances, we will not pay cancellation charges except for reasonable out of pocket expenses - for example, if a trainer has set off to site and incurs non-refundable expenses for accommodation or travel.

If the Contractor has to cancel at short notice, they will reschedule the course as soon as possible with no extra charges passed on to the Environment Agency. Where the Environment Agency has incurred costs in this instance the Contractor will offer a discounted price on the rescheduled course as a gesture of goodwill. The value of the discount will be agreed with the Contractor and the Environment Agency on a case by case basis."

Appendix to Conditions Services

Ref: ecm_59871
Title: NEC4 Training

Condition

1 Contract Supervisor

3

[Redacted]

Address:

[Redacted]

2 Contractor

Built Intelligence Ltd

[Redacted]

3 Completion

6

Contract Start Date 2nd December 2020

Contract End Date 1st December 2023

4 Delivery

11

Address:-
Insert delivery address if different to above

5 Insurance

17

[Redacted]

16

Appendix 1 Specification/Statement of Requirement

1. Introduction:

The EA is responsible for taking a strategic overview of the management of all sources of flooding and coastal erosion. EA have regulatory and operational delivery functions, addressed via Asset Management and Incident Management functions respectively. EA reduce the risk of flooding by constructing, operating and maintaining assets, by working with and influencing others, by providing expert technical advice, and by using their enforcement powers to ensure others meet their responsibilities. Their vision is to develop Flood & Coastal Erosion Risk Management (FCERM) within the EA to be at the forefront of asset management internationally – EA wish to be recognised as an industry leading asset management organisation.

PCM provide project and programme management services to various customers, including those relating to civil engineering/construction projects. PCM is situated within the Operations Directorate, specifically within National Team 'Assets & Programmes' (APM). Previously known as the National Capital Project Management Service (NCPMS), PCM utilises a mix of internal project managers, other support professionals plus contractors/services from their National Framework suppliers (previously WEM¹ but since 2019 NGSA²) to deliver its £5.2 billion programme of work.

Now that EA have transferred from WEM to NGSA, they have identified a need for a selection of NEC4 training places to be made available from January 2021 onwards primarily for permanent Project Managers. These training places will need to accommodate those who were unable to attend previous training sessions, who need a refresh of their knowledge or who are new to the EA.

The aim of this training is primarily to improve understanding/application of the NEC4 ECC and PSC. However, they are also considering the wider NEC knowledge base and how development in this area could further enhance their employees' expertise. To be consistent with their training provisions across the whole of their asset management portfolio, moving forwards they have identified a need for staff within their Area and FCERM Directorate teams who have exposure to and involvement with NEC4 contracts to also be able to access the same NEC4 training as PCM project managers.

The EA have considered best value and past experience of various training methods and wish to explore both the e-learning provision and the in-house classroom development solutions moving forward, both used as separate items and/or blended learning. They have previously utilised externally-hosted e-learning provisions and off the shelf training that has been delivered via in-house classroom workshops with minor adaptations (e.g. examples based upon EA work areas rather than general industry). Given ongoing Covid-19 pandemic working arrangements, for traditional face-to face classroom / group learning solutions, please note that 'virtual' classroom solutions via a suitable online platform may be required moving forwards.

To supplement the above, they are also seeking a programme of accessible bitesize learning on key topics and themes, delivered via pre-recorded webinars or similar mechanism that would

¹ Water and environment management framework

² Next Generation Supplier Agreement

provide a flexible training resource for staff to access as required on an ongoing basis to complement and re-enforce more formal e-learning and face-to-face training.

2. Specific Objectives/Deliverables

The requirement for this contract is to source a high-quality supplier who can deliver NEC4 training and provide an e-learning platform, enabling Project Managers to deliver their role and corporate objectives.

This contract will cover the provision of activities in the following areas:

- Delivery of NEC4 training to build knowledge, skills, capabilities and confidence.
- Testing and evaluation of training participant knowledge at the end of a workshop for instance or at the end of key e-learning topics.
- Access to an e-Learning platform including access to a programme of bitesize learning on key NEC4 topics and themes.
- Support new ways of working and new tools as they develop.
- Advice and support in relation to training development and delivery.
- Being up to date with current legislation and trends/practices and consideration around new ways of working.

The content of the NEC4 training and e-learning platform is expected to cover:

- **Preparing and managing Engineering and Construction Contracts (ECC)**

- key ECC clauses and processes including early warning, the programme, the risk register, defects, payment, communications, compensation events, dispute avoidance and termination
- how to apply Engineering and Construction Contract (ECC) in practice and achieve satisfactory solutions to problems

- **Professional Services Contracts (PSC)**

- the philosophy and commonality amongst all the contracts within the suite of NEC contracts
- the use and appropriate contract strategy to adopt when choosing both primary (A, C, E & G) options and secondary (X1-X20) options
- appreciating the use of Contract Data and Scope
- considering factors involved when preparing tender documents and assessing tender submissions
- considering common amendments that are often made in the form of 'Z clauses' and their potential to alter the dynamics or risk profile of an un-amended contract
- roles and responsibilities of the key parties
- the important PSC clauses and processes, in particular early warning, the programme, Risk Register, communications and compensation events
- how to apply PSC in practice and achieve satisfactory solutions to problems

- **Wider NEC knowledge base (NEC4)**

- an overview of the suite of NEC contracts and their use
- contract strategy for both main options (A-F) and secondary options
- preparing tender documents and assessing tender submissions, use of contract data, scope and site information
- understanding roles and responsibilities of the key parties

Audience:

PCM permanent project managers and staff within Portfolio Assurance (PA), Area and FCERM and Environment and Business Directorate teams who have exposure to & involvement with NEC4 contracts will require access moving forwards to e-learning, plus appropriate peers/support staff where places allow. Where demand dictates, PCM permanent project managers and new starters plus where applicable staff within PA, Area and FCERM Directorate teams who have exposure to & involvement with NEC4 contracts, will also require classroom ('virtual' or 'face-to-face' provision) full workshops in ECC and PSC.

Delegates will be identified by the EA in advance.

Delivery Method:

- 250 e-learning licences are required annually on a call-off basis with the option for further licences to be purchased at a reduced rate; numbers of licences quoted are estimates and not guaranteed.
- e-learning licence payment option required that will facilitate both individual licence purchase via credit card type transaction via a payment portal, in addition to the ability for bulk central purchase of licences to be made via purchase order.
- As part of e-learning delivery platform, a programme of accessible bitesize learning on key topics and themes is required - delivered via pre-recorded webinars or similar mechanism that would provide a flexible training resource for staff to access as required on an ongoing basis to complement and re-enforce more formal e-learning and face-to-face training. It is anticipated that material & content for bitesize learning on key topics and themes would be adapted from off the shelf standard content.
- e-learning will be accessed via an externally hosted portal provided (and technically supported) by the supplier.
- Each delegate should be allocated with a unique log in. Once accessed, a licence cannot be transferred to another delegate; if allocated but not accessed, this can be transferred to another delegate.
- The supplier should provide administration of the e-learning system including management of users, ongoing technical support (including any IT system administration access/dependencies being proposed).
- Classroom workshops will also be required:

- An estimated 80 delegates annually will require in depth NEC4 PSC (anticipated 1 day) and ECC (anticipated 2 day) workshops. Numbers of delegates quoted are estimates and not guaranteed.
 - The classroom workshops to have the option to be delivered either 'face-to-face' at a location across England where demand is highest (maximum 15 delegates per event) or 'virtually'.
 - For 'face-to-face' workshops, EA office space will be provided for the delivery of events, or where this is unavailable the EA will source and pay for a suitable external venue near to key office locations.
 - Indicative delivery timeframe [REDACTED]
 - Face-to-face delivery cost should be a wrapped cost which includes Travel and Subsistence costs in line with EA's Travel & Subsistence policy (detailed within Appendix A).
- e-learning & Classroom - training should include a 'test' element, whereby delegates undertake a test either at the end of a workshop for instance or at the end of key e-learning topics / sections.
 - EA will require quarterly audio conferences with the supplier to assess delivery/performance to date, capture lessons learned, agree/implement necessary adjustments, etc. A contract management plan will be completed once the Contract goes Live.
 - EA's Contract Manager will also require a quarterly report to advise classroom workshop attendance records, licence take-up, delegate progress and test results, in addition to a summary of delegate feedback plus review and identification of lessons learned for all learning solutions.
 - The EA will provide delegates with knowledge support for each subject area on an as required basis, via their in-house Commercial Services Managers (each operational Hub has a specific Manager allocated to them).
 - Delegates will source their own copies of the appropriate NEC4 standard contracts and associated guidance notes where required.
 - For both the virtual and face-to-face delivery there is no need for the supplier to supply laptops for any of the training sessions (except for the consultant's own use in presenting the course etc).
 - The course administration (including dates and joining instructions) will be co-ordinated through the EA Workforce Planning & Skills team within the Portfolio Assurance Resource Planning, Assurance and Skills team. The consultant will work closely with appropriate staff in a flexible way to agree dates.
 - EA's Contract manager will arrange for purchase orders to be raised cover the cost of each course. All invoices must quote the purchase order number in order to be processed. A file copy invoice must be provided to the EA's contract manager, on request. The timescale for payment of invoices will be up to 30 days after the EA has received a valid invoice.

IT System/Technological specifications:

- All e-learning packages and any bitesize presentations & materials hosted on the system need to be [REDACTED]. (Please note in the next 12-24 months EA are expecting to migrate to a new Learning System so that may change. Suppliers should therefore confirm that they have the potential to publish product into other newer e-learning formats over time).
- EA have some restrictions to bandwidth which prevents users from viewing streamed video, so they tend to embed video directly into the package.
- With the phasing out of Flash from the end of 2020 please use alternatives such as HTML5.
- [REDACTED]. But suggest that content is tested to work on both Google Chrome and ISO. Current version running of:
 - o IE – 11
 - o Chrome: 68.0.3440.106

It is EA's expectation that browsers will be updated to later versions in the next 12 months.

- Content should be able to operate on multiple devices, such as laptops/desktops, iPad, and iPhones.
- When designing content ensure that [GOV.UK Accessibility statement](#) is considered so EA are able to accommodate a range of learner needs.
- For audio and video files use MP3&4 file formats.

When developing content it is also recommend that an early build is tested so that any underlying technologies used to develop content can be checked within the EA network.

It is important to note that despite the current specifications detailed above, EA are keen to explore how the provision of IT support can evolve over the life of the contract as EA's capabilities and the world of IT continues to grow rapidly.

Adaptation of standard training courses:

The e-learning provision will be an off the shelf standard provision – they are not seeking any knowledge content adaptations.

The classroom ('virtual' or 'face-to-face') workshops will be an off the shelf standard provision – EA are not seeking any knowledge content adaptations. The only adaptations they would be seeking are where examples are used within the training, that these are realistic to the work of the EA.

It is anticipated that material & content for bitesize learning on key topics and themes, would be adapted from off the shelf standard content. Therefore, the client requires the consultant to provide a development day rate.

Risk Consideration/ Mitigation:

- As teams would be working within their base EA premises, or 'virtually' via home-working arrangements, this reduces Health and Safety risks associated with travelling to other premises or external venues.

- As delegates will be undertaking the training within EA premises, or 'virtually' via home-working arrangements, they will be more readily accessible in case of any emergencies that have the potential to affect their business continuity.

-

Learning Outcomes:

Delegates need to achieve the following learning outcomes:

- Through completion of NEC4 e-learning, participants will gain knowledge, skills, capabilities and confidence in the understanding and application of NEC4 ECC and PSC and also the wider NEC knowledge base (NEC4).
- By attending an NEC4 ECC and / or NEC4 PSC classroom event, participants will obtain knowledge, skills, capabilities and confidence in the understanding and application of NEC4 ECC / NEC4 PSC as applicable, in addition to the wider NEC knowledge base (NEC4), including where appropriate examples based upon EA work areas rather than general industry training.
- Through a programme of bitesize learning via the e-learning platform, participants will be able to access a flexible training resource on key topics and themes as required on an ongoing basis to complement and re-enforce more formal e-learning and face-to-face training.
- The 'test' element requested as part of both e-learning & Classroom training should enable participants to demonstrate and confirm knowledge gained at the end of a workshop for instance or on completion of key e-learning topics.

Appendix 2 PRICING SCHEDULE

ALL COSTS ARE EXCLUSIVE OF VAT

Costing Table 1 – 250 e-learning Licenses

Item Number	Cost breakdown	Unit	Cost per	Total Cost £
1.	e-learning - Initial main provision of 250 e-learning licenses (numbers not guaranteed) on a call-off basis.			

Costing Table 2 – Training Delivery and additional Individual e-learning Licence

Item Number	Cost breakdown	Unit	Cost per Unit (£)
2.	e-learning - Add-on provision of e-learning licenses above that indicated above as part of the initial provision of 1-250 Licenses.		
3.	Classroom - 'Face-to-face' delivery format ECC event for 15 delegates (anticipated to be two- day event) at a location across England where demand is highest. Cost to include Travel & Subsistence in line with EA's Travel & Subsistence policy.		
4.	Classroom - 'Virtual' delivery format ECC event for 15 delegates (anticipated to be two-day event)		
5.	Classroom - 'Face-to-face' delivery format PSC event for 15 delegates (anticipated to be one day event) at a location across England where demand is highest. Cost to include Travel & Subsistence in line with EA's Travel & Subsistence policy (see below).		
6.	Classroom 'Virtual' delivery format PSC event for 15 delegates (anticipated to be one day event)		
7.	Other costs		
Total Cost of Items 2 to 7			

Costing Table 3 – Day development rate

There may be a requirement for the redevelopment of the training material during the life of the contract. Therefore we require the supplier to provide a development day rate.

Staff	Development Cost £ per Day, Excluding VAT

Costing Table 4 – Total Costs

Please add the total cost of table 1 and table 2 (cells highlighted in Yellow). **This figure is figure entered in the Commercial envelope in Bravo.**

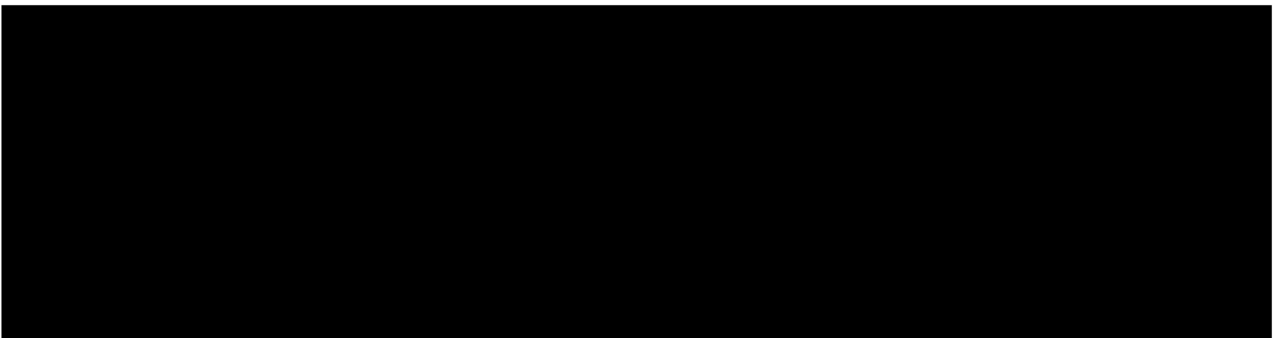
	Total Cost £
Total Cost of Items 1 to 7	£48,385

The following limits will be applicable to all claims for travel and subsistence under this contract:



Hotel bookings should be made through the Environment Agency's corporate travel contract. Details of this contract are available from the Corporate Contracting Team.

When making reservations you should state that you are a contractor working on Environment Agency business.



Receipts for all rail travel, hotel and food expenses will be required as proof of expenditure and will be reimbursed at cost. No profit or additional cost shall be applied by the contractor to such personal expenses.

Appendix 3 PRIOR RIGHTS SCHEDULE

PRIOR RIGHTS SCHEDULE

Details of Prior Rights held by the Parties

Prior Rights owned or lawfully used by a Party, whether under licence or otherwise, which it introduces to the Project for the purposes of fulfilling its obligations under the Contract

Held by the Environment Agency

Name and description of Prior Rights	Extent of proposed use in the Project	Proprietary owner of the Prior Rights

Held by the Contractor

Name and description of Prior Rights	Extent of proposed use in the Project	Proprietary owner of the Prior Rights

Explanation of Contractor's Prior Rights

All Intellectual Property Rights owned by or lawfully used by the Contractor, whether under licence or otherwise before the date of this Contract. It can also mean any invention and know how or other intellectual property (whether or not patentable) owned by one of the parties prior to the commencement of the Project or devised or discovered by one of them only in the course of other projects during the Project period and not arising directly from the Project.