



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contract Short Form Enhanced

**C20885 - Allonby Bay candidate HPMA drop-down camera  
and grab sampling survey: feature extent and seabed  
character assessment.**

**October 2023**

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# Order Form

1. Contract Reference	C20885	
2. Date	11 <sup>th</sup> October 2023	
3. Authority	Natural England Bristol, Horizon House BS1 5AH	
4. Supplier	Seastar Survey Ltd. Ocean quay Southampton SO14 5QY  Company registration: 6303715	
4a. Supplier Account Details	Supplier to provide account details on invoice.	
5. The Contract	<p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("<b>Conditions</b>") and any [<b>Annex/Annexes</b>].</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any inconsistency between the provisions of the Order Form, the Conditions and the Annexes, the inconsistency shall be resolved by giving precedence in the following order:</p> <ol style="list-style-type: none"> <li>1. Order Form, Annex 2 (<i>Specification</i>) and Annex 3 (<i>Charges</i>) with equal priority.</li> <li>2. Conditions and Annex 1 (<i>Authorised Processing Template</i>) with equal priority.</li> <li>3. Annexes 4 (<i>Tender Submission</i>) and 5 (<i>Sustainability</i>).</li> </ol> <p>In the event of any inconsistency between the provisions of Annexes 4 and 5, Annex 5 shall take precedence over Annex 4.</p> <p><b>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</b></p>	
6. Deliverables	Goods	N/A

	<p><b>Services</b></p> <p>This survey will contribute to evidence gathering in year one of the Highly Protected Marine Areas (HPMAs) pilot project.</p> <p>HPMAs are areas of the sea that allow for the protection and full recovery of marine ecosystems. By designating areas of sea with high levels of protection, HPMAs will allow nature to fully recover to a more natural state, allowing the ecosystem to thrive. They prohibit extractive, destructive and depositional uses, allowing only non-damaging levels of other activities to the extent permitted by international law.</p> <p>HPMAs will protect all species and habitats and associated ecosystem processes within the site boundary, including the seabed and water column. This means gathering comprehensive evidence of the effectiveness of the HPMA in delivering biodiversity recover will be critical.</p> <p>The ecological monitoring of this Defra-funded programme will be led by Natural England and JNCC. Natural England's marine remit includes biodiversity extending from the intertidal zone out to twelve nautical miles. Natural England will therefore gather baseline data and continue to monitor the inshore HPMA site Allonby Bay throughout the pilot project.</p>
<b>7. Specification</b>	The specification of the Deliverables is as set out in Annex 2.
<b>8. Term</b>	<p>The Term shall commence on 13<sup>th</sup> October 2023 (the <b>Start Date</b>) and the Expiry Date shall be 31<sup>st</sup> March 2024, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p> <p>The Authority may extend the Contract for a period of up to 2 months' by giving not less than 1 months' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.</p>
<b>9. Charges</b>	The Charges for the Deliverables shall be as set out in Annex 3.

<b>10. Payment</b>	<p>The Authority's preference is for all invoices to be sent electronically, quoting a valid Purchase Order Number (PO Number), to:</p> <p><a href="mailto:APinvoices-NEG-U@gov.sscl.com">APinvoices-NEG-U@gov.sscl.com</a></p> <p>Alternatively, you may post to:          Shared Services Connected Ltd          DEF Procure to Pay          PO Box 790          Newport          Gwent          NP10 8FZ</p> <p>For EA SSCL (Environment Agency)          PO Box 797          Newport          Gwent          NP10 8FZ</p> <p>Within <b>10</b> Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant with Annex 3 Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment, please contact the Authority's Authorised Representative(s).</p>	
<b>11. Authority Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be</p> <p>_____</p> <p>or, in their absence,</p> <p>_____</p>	
<b>12. Address for notices</b>	<p><b>Authority:</b></p> <p>_____</p> <p><b>Natural England, Bristol, Horizon House, BS1 5AH</b></p>	<p><b>Supplier:</b></p> <p>_____</p> <p><b>Seastar Survey Ltd Unit 1 Outlook House Hamble Point School Lane Hamble SO31 4NB</b></p>

	<div> <div> Attention: [REDACTED]</div> <div>Email: [REDACTED]</div> </div> <div> <div>Attention: [REDACTED]</div> <div>Email: [REDACTED]</div> </div>
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<b>16. Insurance</b>	<p>The Supplier shall hold the following insurance cover from the commencement date and for the duration of the Contract:</p> <p>Professional Indemnity insurance £1 million per occurrence and in the aggregate.</p> <p>Public Liability insurance £1 million per occurrence and in the aggregate.</p> <p>Employers Liability insurance £5 million per occurrence and in the aggregate</p>	
Signed for and on behalf of the <b>Supplier</b> .		Signed for and on behalf of the <b>Authority</b> .
Name: <span style="background-color: black; color: black;">[REDACTED]</span>  <span style="background-color: black; color: black;">[REDACTED]</span>		Name: <span style="background-color: black; color: black;">[REDACTED]</span>  <span style="background-color: black; color: black;">[REDACTED]</span>
Date:		Date:
Signature:		Signature:

## Annex 2 – Specification

The Authority is Natural England. The Authority's priorities are to secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy and secure food supply. Further information about the Authority can be found at: [Natural England](#)

## **1 Introduction**

This survey will contribute to evidence gathering in year one of the Highly Protected Marine Areas (HPMAs) pilot project.

HPMAs are areas of the sea that allow for the protection and full recovery of marine ecosystems. By designating areas of sea with high levels of protection, HPMAs will allow nature to fully recover to a more natural state, allowing the ecosystem to thrive. They prohibit extractive, destructive and depositional uses, allowing only non-damaging levels of other activities to the extent permitted by international law. HPMAs will protect all species and habitats and associated ecosystem processes within the site boundary, including the seabed and water column. This means gathering comprehensive evidence of the effectiveness of the HPMA in delivering biodiversity recover will be critical.

The ecological monitoring of this Defra-funded programme will be led by Natural England and JNCC. Natural England's marine remit includes biodiversity extending from the intertidal zone out to 12 nautical miles. Natural England will therefore gather baseline data and continue to monitor the inshore HPMA site Allonby Bay throughout the pilot project.

## **1 Survey Area**

Allonby Bay candidate HPMA covers 27.6 km<sup>2</sup> of the southern region at the mouth of the Solway Firth (Figure 1). The boundary follows the Mean High-Water line along the shore from the western most building of Bank End Farm, Maryport to Christ Church south of Allonby and then extends seaward to approximately 5.6 km off the shore at its maximum width. The site has a maximum depth of 6.6m at lowest chart datum (Figure 2). The area is located within the 12 nm territorial sea limit of the Irish Sea region. It overlaps with Allonby Bay MCZ and the Solway Firth SPA and there is a very small overlap with the Solway Firth SAC and Upper Solway Flats and Marshes SSSI along the north-eastern boundary.



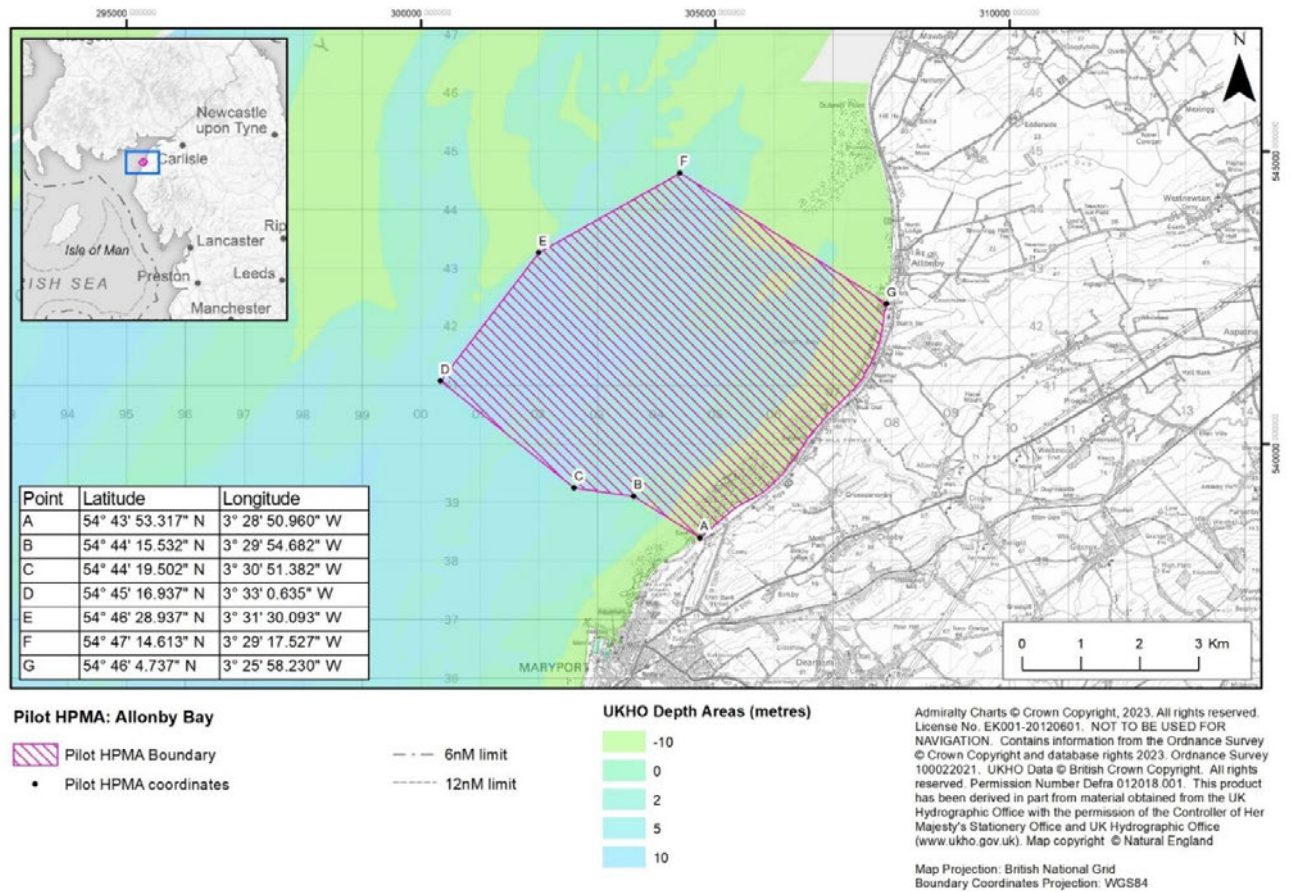


Figure 1. Candidate HPMA Allonby Bay proposed boundary and coordinates.

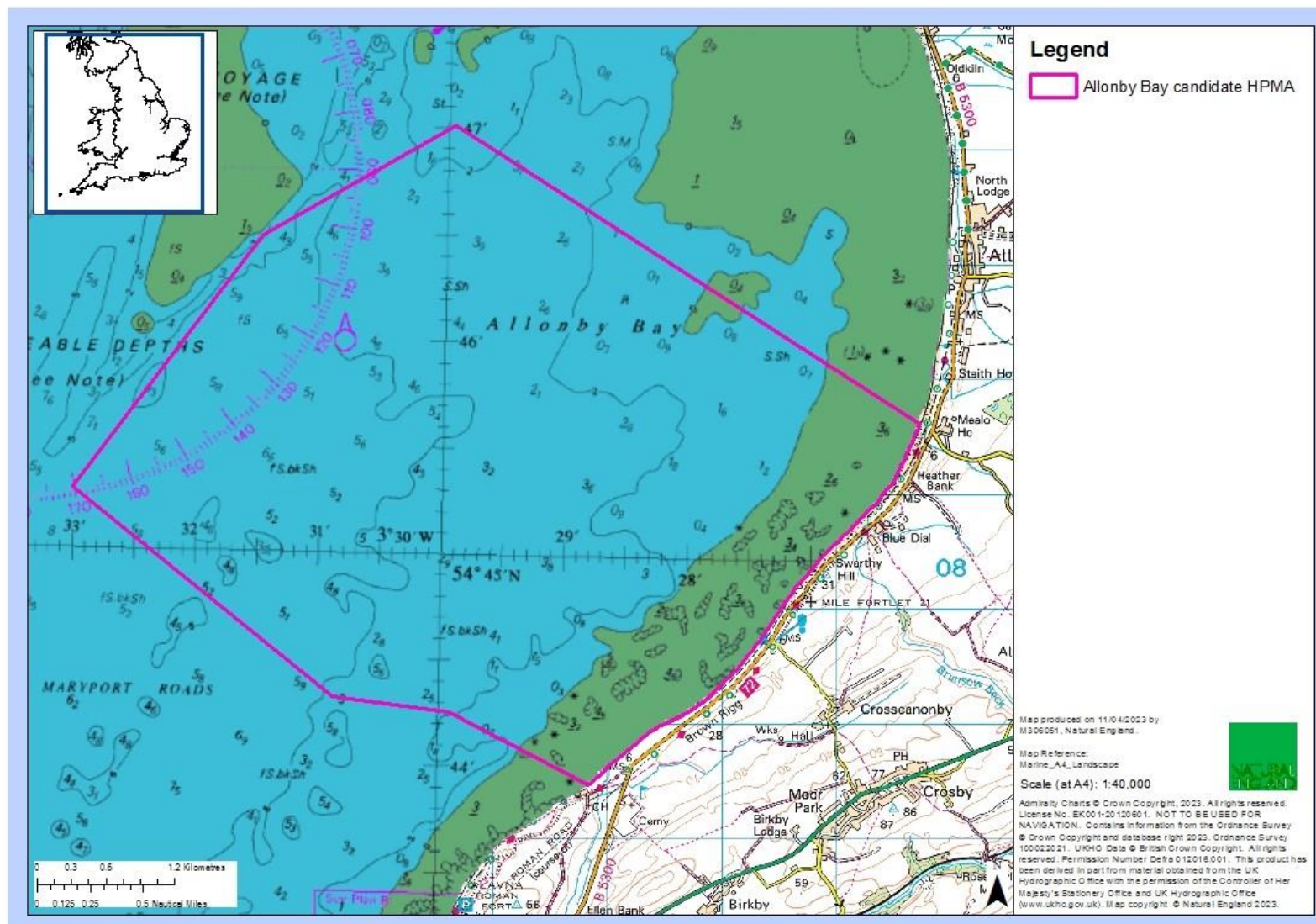


Figure 2. Candidate HPMa Allonby Bay chart datum.

Allonby Bay consists of a mix of habitats, characteristic of an environment that is subject to dramatic currents and tides. The seabed consists of a range of rocky habitats and sediment dominated habitats, including mudflats, sandbanks, reefs, peat and clay exposures, and biogenic reefs (Figure 3).

The nutrient-rich sediments, dense mussel beds and intertidal rocky habitats in this area attract large densities of shore birds including species such as curlew and oystercatcher. The biodiverse subtidal habitats here provide a food source for fish species, such as flat fish and nursery areas for other species such as bass, cod and herring. In turn, these fish species attract diving, foraging seabirds including guillemots, gannets and razorbills. There is also one of the best examples of honeycomb *Sabellaria alveolata* reefs in the UK within the site, creating a complex sediment network of tubes attached to rock creating vital habitat for crustacea and molluscs.

Previously recorded habitats in the Allonby Bay MCZ include:

- Moderate energy littoral rock
- Low energy littoral rock
- Features of littoral rock (rockpools/ ephemeral algae)
- Littoral sand and muddy sand
- Littoral biogenic reefs
- Features of littoral sediment (ephemeral algae)
- High energy infralittoral rock
- Moderate energy infralittoral rock
- Moderate energy circalittoral rock
- Sublittoral coarse sediment
- Sublittoral sand
- Sublittoral mud
- Sublittoral mixed sediments
- Sublittoral biogenic reefs

For full site details please see: [Highly Protected Marine Areas \(HPMAs\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/highly-protected-marine-areas) and the updated site narrative for the boundary to be designated in Appendix 1

A designation order covering a HPMA will set out the protected features and the conservation objectives applicable within the HPMA site boundary. The protected feature is: “The marine ecosystem, habitats and species of flora and fauna, abiotic elements, and their supporting ecosystem function and processes, including the seabed, water column and sea surface,

within the site boundary.” The proposed conservation objective for all pilot HPMAs, including Allonby Bay is: “To achieve full natural recovery of the structure and functions, features, qualities and composition of characteristic biological communities present within HPMAs and prevent further degradation and damage to the marine ecosystem subject to natural change.”

Natural England and JNCC advise within an HPMA:

1. The ecosystem is allowed to fully recover in the absence of damaging activities such that:
  - The ecosystem structure consists of a diverse range of benthic and pelagic communities, habitats and species, including biotic and abiotic components of the ecosystem. These fulfil a variety of functional roles, including supporting key life cycle stages and/or behaviors of marine species.
  - The physical, biological and chemical ecosystem processes and functions proceed unhindered, so that the site realises its full ecological potential to deliver goods and services, including habitats and species considered important to the long-term storage of carbon, and habitats and species important for flood and erosion protection.
  - The ecosystem is resilient to change and stressors.
2. Any ecosystem changes brought about by the process of removing anthropogenic pressures should be considered in the context of a naturally recovering ecosystem.
3. The HPMA supports our understanding of how marine ecosystems change and recover in the absence of impacting activities



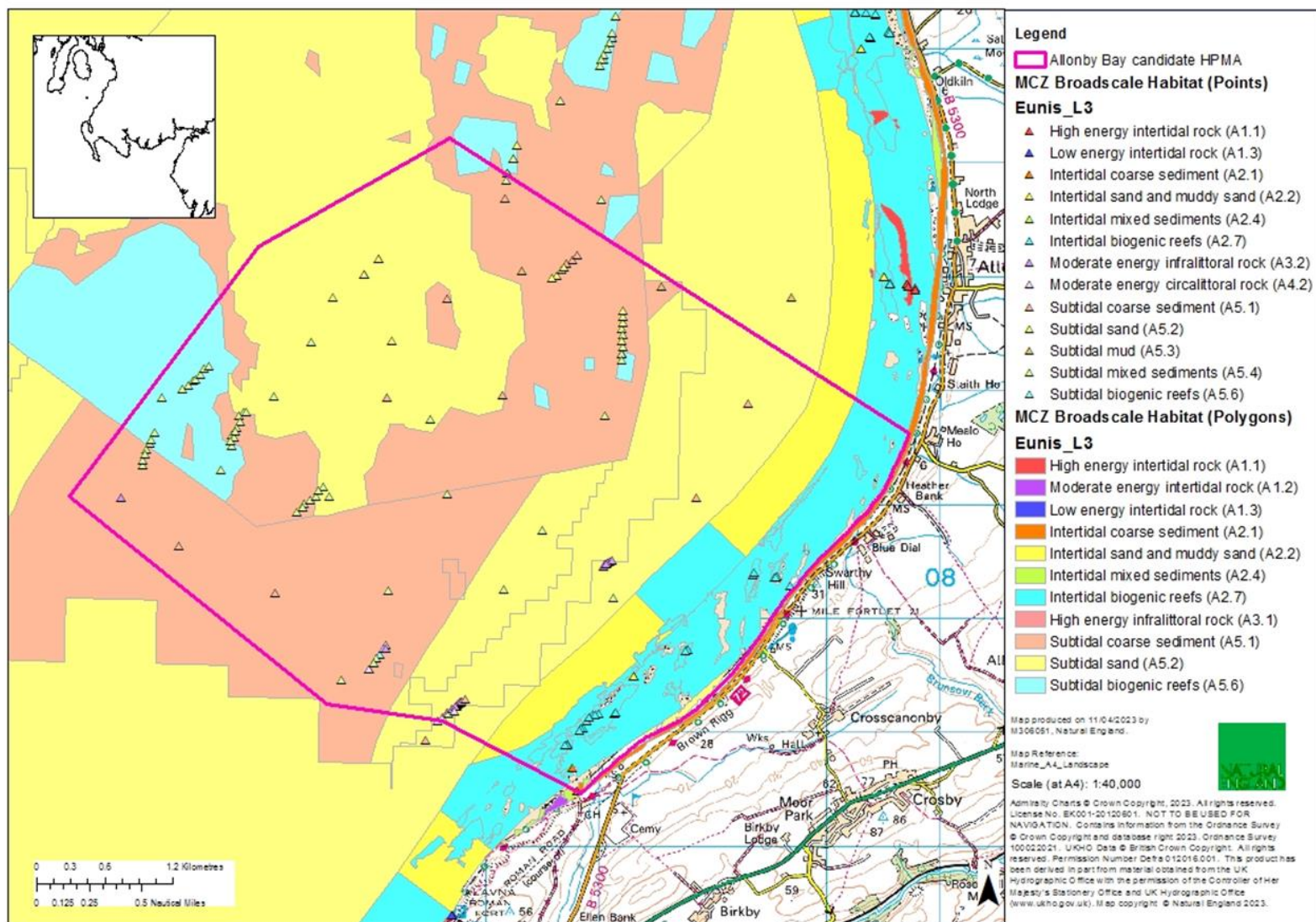


Figure 3. Current map of the broadscale habitats in Allonby Bay with the candidate HPMA boundary.

## 2 Previous Surveys

Previous bathymetry and backscatter data were collected in Allonby Bay in 2009 by [REDACTED] (Figure 4 and Figure 5). Defra commissioned a number of surveys to provide supplementary information as part of the MCZ designation process. The Environment Agency carried out habitat characterisation surveys (grab sampling and drop camera) in February and March 2012 for Allonby Bay MCZ ([REDACTED]) (Figure 6 and Figure 7). The 2012 survey yielded insufficient data for the site; issues with the camera set up resulted in most images being discarded and the majority of grab samples were discarded as insufficient volume was collected. As a result, at most stations broad-scale habitats could not be defined. Natural England has confidence that both survey methodologies can be improved that would allow for an improved understanding of the extent and distribution of benthic habitats in Allonby Bay HPMa.

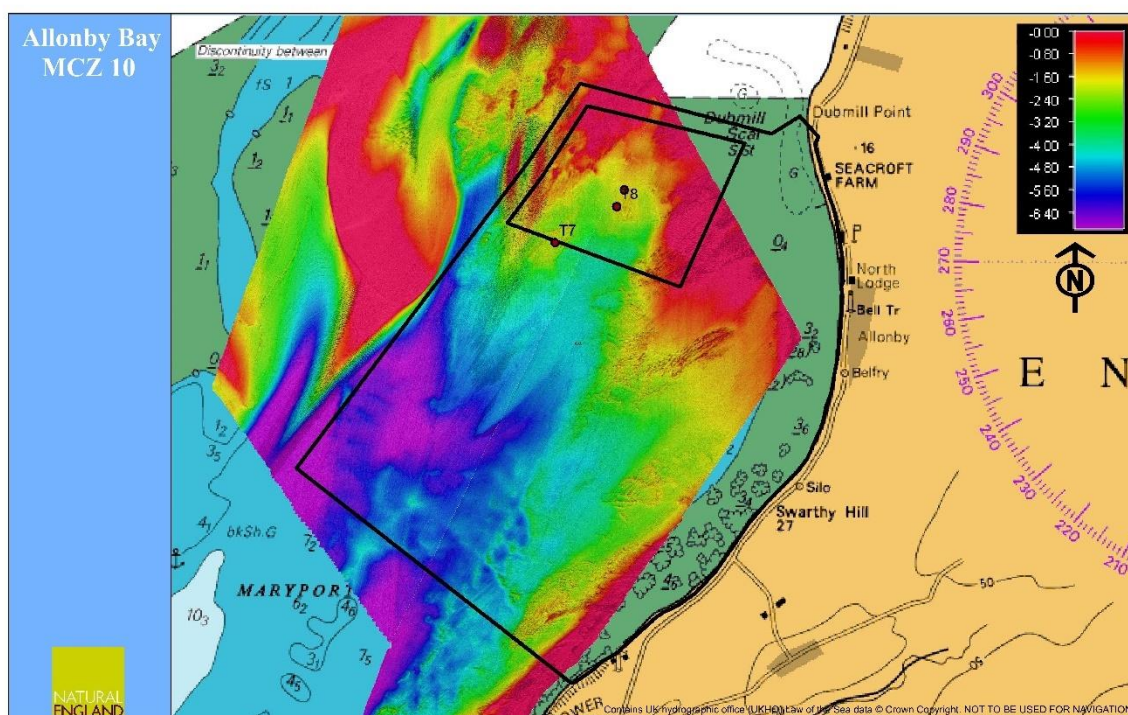


Figure 4. Bathymetry for Allonby Bay MCZ ([REDACTED])



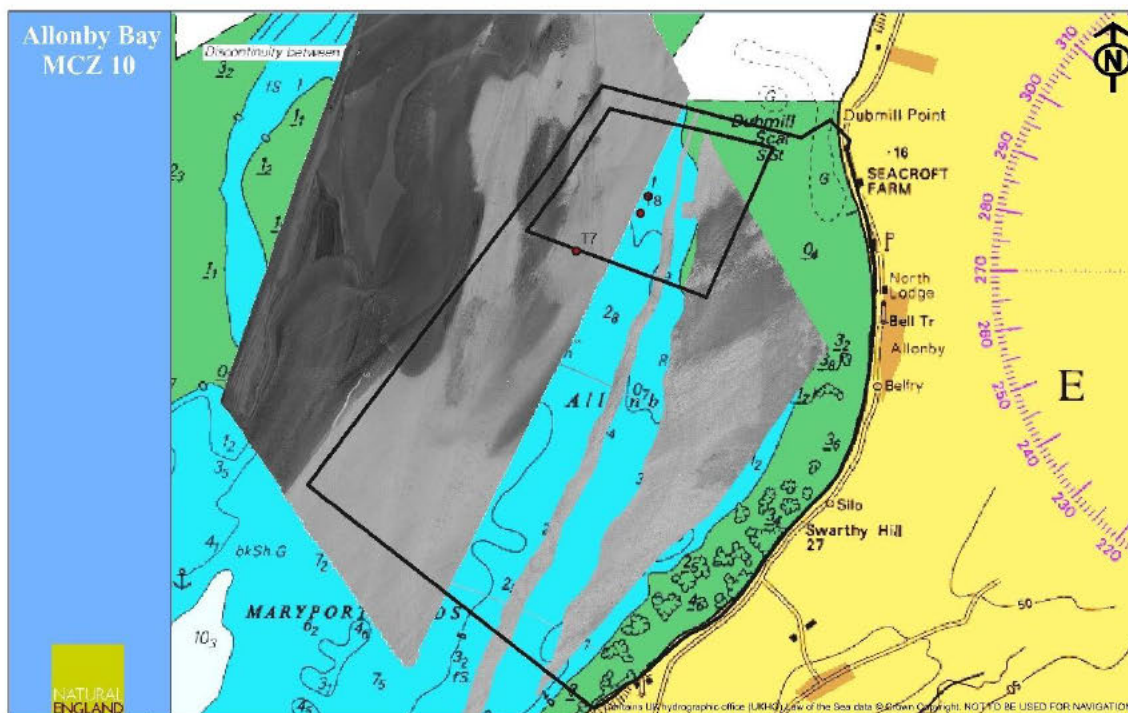


Figure 5. Incomplete backscatter for Allonby Bay MCZ ( [REDACTED] )

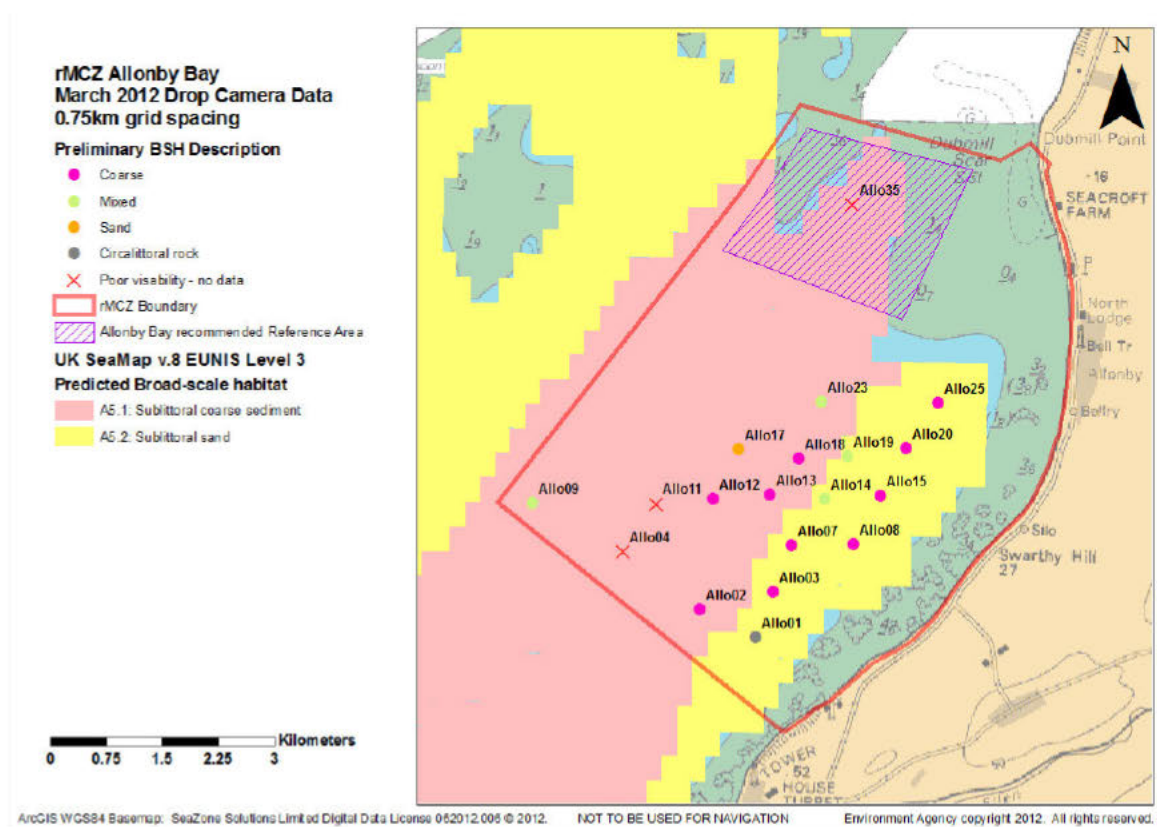


Figure 6. Benthic habitat characterisation for Allonby Bay MCZ using drop camera data (EA, 2013)

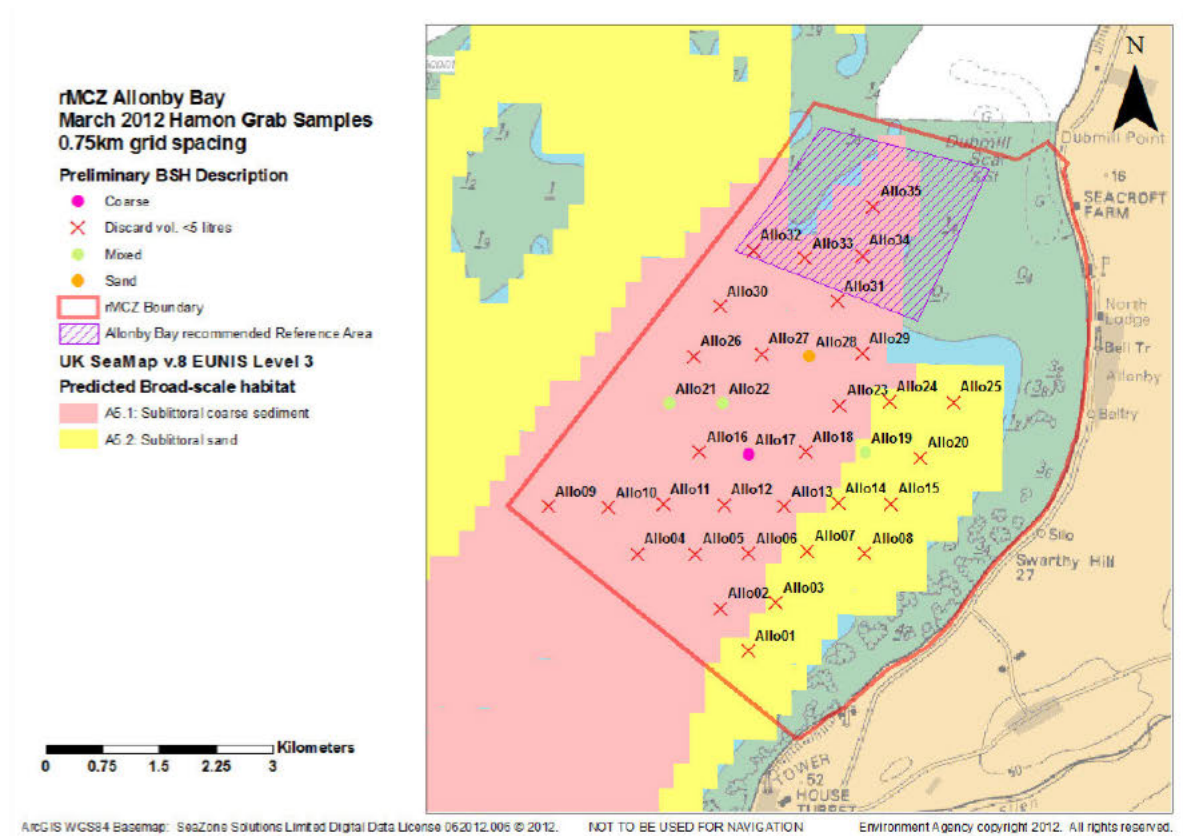


Figure 7. Broad Scale Habitat (BSH) descriptions based on a modified Folk seabed sediment classification system recorded during the Allonby Bay rMCZ survey (EA, 2013)

### 3 Aims & Objectives

Natural England is commissioning ecological survey work in summer 2023 to understand the extent and distribution of subtidal broad-scale habitats in Allonby Bay candidate HPMAs. This project will ground-truth subtidal habitat classification maps derived from acoustic survey work (which will be let as a separate tender in early summer 2023) using a combination of drop-down camera and grab sampling techniques.

The survey design should achieve the following:

- Acquire high quality data to establish a baseline of the extent and distribution of the Subtidal habitats. Multibeam and backscatter data collected in summer 2023 should be used to assist with this.
- Acquire high quality biological data of suitable resolution to allow key indicators of condition to be assessed according to Common Standards Monitoring guidance for the sublittoral rock habitats (including biogenic reefs) and sublittoral sediment habitats. This data should be sufficient as to provide detailed baseline information.



- iii. Specify how the survey work will be carried out, including equipment to be used, improvements to previous methodologies ( ), and how challenging conditions that occur within Allonby Bay cHPMA will be accounted for.

Survey work should be scheduled to be completed between October - November 2023

#### 4 Objectives

The main objectives of this contract are to, in collaboration with Natural England, plan, undertake and report on drop down video and grab survey work in the summer of 2023 to collect baseline data and inform future assessment of the recovery of subtidal habitats in Allonby Bay HPMA. Surveys should determine the presence and extent of subtidal habitats.

Environmental indicators have been identified to measure change and assess recovery over time in HPMA. Biotic and abiotic attributes are set out for each indicator and consider a whole-site management approach.

Primary indicators to monitor in this survey:

- Benthic habitats (extent and distribution)
- Species (distribution, abundance, diversity)
- Invasive species
- Sediment biota (biomass)

Secondary indicators to monitor:

- Shellfish

Under this specification contractors must:

- i. Develop, agree and implement, in collaboration with Natural England, a survey plan to collect data suitable for undertaking assessment of the direction of ecological change within the communities / habitats identified under this specification, integrating and interrogating previously obtained relevant data in the analysis.
- ii. Where possible, ensure that newly collected data is compatible (analytically) with historical survey data, but at the very least will make reference to and utilise such historical data.
- iii. In agreement with Natural England implement a statistically robust survey design to enable future collection of compatible data permitting quantitative long-term analysis.

- iv. Ensure anthropogenic influences, potentially impacting subtidal habitats are identified and where possible quantified allowing analysis to focus on investigation of the potential impacts of these pressures.
- v. Provide an evidence based preliminary assessment of the condition of subtidal benthic habitats in Allonby Bay candidate HPMA, clearly stating out how the assessment is supported by the analysis of data collected. This should note any difference in observed condition between similar communities which are subject to varying degrees of anthropogenic pressures to focus analysis on investigating particular impacts.
- vi. Provide fully detailed methodology for the work undertaken to ensure that methods can be repeated in the future, for example, camera equipment descriptions, camera/lights set up methodology, internal camera set up, photographic sampling frequency and vessel manoeuvring.
- vii. Produce a concise field report.
- viii. Produce an evidence based technical report detailing the work undertaken, reporting the survey and analytical findings, discussing these in the light of any previous data and providing the preliminary subtidal habitats. If drawing upon “expert judgement” in addition to the collected and analysed data, this must be clearly identified and presented separately from the core results of this survey work.
- ix. Provide all data to the relevant standards including GI and Marine Recorder data (see details below).

## **5 Methods**

### **6 Pre-survey deskwork**

Before the survey is carried out the contractor will discuss any pre-survey work with the Nominated Officer, including:

- Acquisition and checking of sources of relevant information and gathering of local advice in preparation of a project plan.
- Ways of working and close collaboration with NE in developing project plan, particularly development of a robust survey sampling strategy which should enable temporal comparisons to be made with previous datasets. Selection of survey sites, taking account of NE pre-survey scoping work and using appropriate methodologies.

## 7 Technical equipment

### Image acquisition

Deployment of the video camera (including stills camera mounted on video frame will comply with guidance developed by MESH: 'Recommended operating guidelines (ROG) for underwater video and photographic imaging

techniques([http://www.searchmesh.net/PDF/GMHM3\\_Video\\_ROG.pdf](http://www.searchmesh.net/PDF/GMHM3_Video_ROG.pdf)). The 'best practice guidance' outlined in Section 12.1 will all be employed where relevant for the current project. Any proposed departure from this MESH guidance will be highlighted and reasons provided. Hitchens *et al.*, 2015 epibiota sampling procedures from NMBAQA will also be adhered to.

Potential contractors should specify how survey methodologies and technical equipment might be improved from previous surveys (██████████ to acquire better data. This might include use of a freshwater lens to obtain higher quality images, which has been used on similar surveys in nearby areas (Morecambe Bay, Solway Firth). The contractor should provide full details on the lighting system and its positioning, as well as numerous sample images which they have been able to capture from extremely highly turbid environments using the systems proposed for deployment under this contract.

In addition, it is critical that laser scaling devices are used to effectively classify the habitats in the imagery. i.e., defining boulders/cobbles >64mm, see Irving 2009.

### Grab sampling

Faunal sampling should conform to standard methodology [ISO 16665:2014](#), and identification should be carried out in accordance to the [NMBAQC quality control guidelines following Standard Operation Procedure ES-04](#).

Potential contractors should specify how survey methodologies and technical equipment might be improved from previous surveys (██████████ to acquire better data. For grab surveying, this might include a weighted mini-Hammond grab, and multiple attempts at each survey station. Contractor to specify minimum number of attempts per site) and any slight moving from target for additional attempts.

## 8 Site access

The Nominated Officer should be contacted prior to commencement of any fieldwork.

Natural England will obtain permission from seabed owners or leaseholders for survey work on the seabed and will supply a copy of this permission to the contractor. Each member of the survey team must carry a letter from Natural England to confirm that they are doing this work on the

behalf of Natural England. Survey work will not be able to begin until access permissions have been obtained by Natural England.

The removal of sediment samples from the seabed must meet the terms of a marine licence exemption set out in [Article 17 of the Marine Licence \(Exempted Activities\) Order 2011 \(as amended\)](#). The MMO require notification of any exempted activities occurring; Natural England will be responsible for submitting the relevant information to the MMO for this.

## **9 Field survey**

Survey work under the contract should be scheduled as per project discussions.

Surveys will be carried out in accordance with the technical specification provided for this lot referred to above. Alternative approaches will be considered if they meet the aims and objectives of the contract, demonstrate efficiencies, and are agreed with NE prior to survey commencing.

## **10 Local conditions**

As stated in sections 1 and 1.2 the working conditions at this site are highly challenging. Use of appropriate equipment and correct timing of the survey will be crucial if sufficient, useable data is to be collected.

Weather forecasts will need to be continually checked in the periods leading up to the survey. It is an additional requirement of this contract that the winning contractor liaise with a local contact, e.g., ABP (Associated British Ports) Barrow, whose hydrographic surveyors may be able to provide direct observations of local conditions and notification of clearer, less turbid conditions.

## **11 Invasive Non-Native Species**

Invasive Non-Native Species (INNS) are considered to be one of the top five pressures directly driving biodiversity loss globally. Prevention is the key focus, particularly in marine environments. The contractor shall be aware of and work in accordance with standard good practice biosecurity measures to avoid spread of INNS:

- Equipment, clothes and boots should be clean before carrying out any work on site.
- When on or near water it is important that equipment is drained after use and as far as possible dried
- Boats to be used in survey work should have their hulls cleaned on a regular basis. Best practice guidelines should be followed as outlined by [The Green Blue](#).

INNS species previously recorded in this region and/or to particularly look out for during this survey. See [GB non-native species secretariat](#).

The Contractor must report any records of INNS observed on site on Marine Recorder and to the Natural England project officer as part of the survey report. Any species currently listed as 'alert' species should be flagged immediately to the GB Non-Native Species Secretariat <http://www.nonnativespecies.org/alerts/index.cfm>. More information and guidance including ID guides can be found at [www.nonnativespecies.org](http://www.nonnativespecies.org) and the [Marine Aliens Project](#).

## **12 Downtime**

The works must be undertaken in summer when there is a low risk of exposure from westerly winds and swells. There may be some downtime incurred due to poor weather thus the tender must outline what proportion of downtime they predict throughout the course of the survey. This percentage downtime figure should be used to provide a lump sum costing which covers this risk and acts as an insurance against further unpredicted downtime. Natural England will not pay for downtime resulting from mechanical failure or personnel issues.

Natural England requires that the contract be assigned through an all-inclusive single price agreed at the outset of the project. The final quoted price should incorporate any potential weather downtime or risks likely to incur further costs after the contract has been awarded.

## **13 Survey outputs**

This contract shall be managed on behalf of the Authority by [REDACTED]

## **14 Reporting requirements**

The successful contractor should produce a field report and a brief report outlining.

- the survey methodology used,
- A timeline of events and actions
- Any difficulties encountered.
- A brief discussion and interpretation of the data i.e., obvious features, areas of similar sediment type, areas of sediment change, identification of seabed features.
- Maps of habitats identified at biotope level where possible and higher level (e.g., L3) where this was not possible.

Draft reports should be provided in electronic MS Office Word \*.DOCX format for comment. A template and guidance exist for writing Natural England commissioned reports and will be sent to

the contractor upon award of the tender. All reports should retain a clear suggested citation stating that it is a 'Report to Natural England.'

## 15 Data requirements

Data must be interpreted, analysed, and presented in light of the overarching hypotheses stated above. Contractors should pay particular consideration to the data and GIS required formats for information compatibility including MEDIN metadata standards and Marine Recorder provision. All datasets must have associated metadata and meet appropriate organisational metadata standards. Relevant metadata standards are a requirement for data which Natural England publishes externally.

All interpreted products following data analysis should accompany the draft report; these will include:

- All GIS datasets need to be provided in ESRI ArcGIS format compatible with ArcGIS 10.2 and have attached metadata.
- All GIS files containing habitat data for each individual survey need to be produced to the [MESH translated habitat Data Exchange Format \(DEF\)](#) to the most detailed EUNIS habitat level possible. MNCR ([v15.03](#)) data should be added to the ORIG\_HAB column. The GUI provided by Natural England for each survey will be used, and as much information as possible (e.g., survey name, originally assigned feature/habitat name etc.) from the original dataset, as well as any documentation provided (where available) should be included in the resulting datasets to maintain a useful audit trail. As specified in the [MESH DEF](#), data files must be provided as ESRI Shapefiles or as a feature class data within a geodatabase using the WGS1984 geographic coordinate system and lat/long coordinates. If not included in the GIS data layers listed above all sampling locations, vessels tracks, and links to data obtained should also be included as a single GI layer.
- A MESH data confidence assessment for each habitat map should be calculated and provided in a 'MESH confidence scoresheet' \*.XLS file. The confidence assessment process is described, and a template provided in the following MESH resources [The MESH Confidence Assessment Scheme](#).
- Accompanying metadata for the data set must meet the [MEDIN metadata discovery standard](#). Metadata derived as part of this project must be submitted to Natural

England in an XML file which Natural England will archive through Data Archive Centres (DACs). Guidance 'MEDIN Evidence for Contractors' will be provided to the winning contractor.

- Copies of the original data spreadsheets or databases are to be provided in the appropriate Microsoft Office format.
- Stills photographs to be provided in their raw format on CD/DVD or USB compliant external hard drives.

All sample data (e.g. grab sample analyses, video/still photography analyses, PSA analysis and biotope lists, biological taxon data) need to be entered into the latest version of [Marine Recorder](#). NBN data and an exported snapshot file of the data should be provided for QA. Natural England will provide licence keys for Marine Recorder. Natural England will supply a 'Marine Recorder guidance for contractors' document to successful contractors.

The Contractor must report any records of Invasive and Non-Native Species observed on site on Marine Recorder and to the Natural England project officer as part of the survey report. Any species currently listed as 'alert' species should be flagged immediately to the GB Non-Native Species Secretariat [Species alerts](#). More information and guidance including ID guides can be found at [GB non-native species secretariat](#).

Copies of the original data spreadsheets or databases are to be provided in the appropriate Microsoft Office format. However please be aware that using MEDIN marine biodiversity data guideline spreadsheets (available online under the marine biodiversity tab at [MEDIN data guidelines](#)) will ensure that biological taxon data is prepared correctly for entry into Marine Recorder and will facilitate the efficient entry of data into this system and the data archiving process in general. Natural England welcomes and supports the provision of raw data spreadsheets in the MEDIN format and expects that all raw datasheets will contain the mandatory fields in the MEDIN guidelines, regardless of their format.

Standard survey imagery (stills and video) is to be provided in their raw format electronically or on USB compliant external hard drives (to be provided by the contractor).

High quality imagery which has been selected to form part of the image reference collection for the survey need to be labelled appropriately, including the habitat/species which is represented.

These should be provided as a separate folder on the storage device to the standard survey imagery.

All data products and electronic files must be appropriately named so they sufficiently describe the contents and are not purely a numerical value. All products should be named appropriately so that they can be clearly linked to the report/project.

Any species lists submitted will be compliant with current taxonomic names and synonyms (e.g., [Marine Species of the British Isles and Adjacent Seas \(MSBIAS\)](#), World Register of Marine Species (WoRMS))

Video and still camera filenames must include the recording start date and time. Position data must be included within the overlay information.

The NE Project Officer will raise purchase orders to cover the cost of the services and will issue to the awarded supplier following contract award. Upon completion of the survey, the first of two staged payments for this contract will be released. Final payment will be issued upon completion of the final report.

#### 16 Timeline for project delivery

Event	Date
Successful contract awarded	September 2023
Finalise sampling design	October 2023
Produce final project plan	October 2023
Survey to be completed by	November 2023
Submission of brief field/survey report by	January 2024
Draft final report and associated products to be provided by	February 2024
Final report, biotope maps and output to be delivered	March 2024

Any delays to this timetable should be discussed with the Natural England Project Officer and delays not outside the control of the contractor will be penalised.



## 17 Other

In support of this contract NE will provide the winning supplier with:

- Project support from dedicated Project Officer
  - Opportunity to feedback and discuss progress and the project.
  - Supporting GIS datasets (if required) under licence for use in this contract:
    - Base map data from Ordnance Survey
    - Aerial photography from Next Perspectives
    - S-57 vector data from the UK Hydrographic Office (in ArcGIS format) \*
    - Raster charts from Oceanwise\*
- \*(Not to be used for Navigation)

Please see the following site for information on how to obtain access to the GI datasets listed above: <https://www.gov.uk/how-to-access-natural-englands-maps-and-data>

- Additional reports to help with the analysis and report, such as those listed in Section 1.2

The intellectual property rights and copyright for all products (including photographs) will lie with Natural England. All data will be made available by Natural England under the Open Government Licence at the end of the project via [www.data.gov.uk](http://www.data.gov.uk) and the MEDIN Data Archiving Centres.

## 18 References

Davies, J., Baxter, J., Bradley, M., Connor, D., Khan, J., Murray, E., Sanderson, W., Turnbull, C. & Vincent, M., (2001). Marine Monitoring Handbook, 405 pp, ISBN 1 85716 550 0. Available online at: <http://jncc.defra.gov.uk/page-2430>

Godsell, N. & Fraser, M. (2013). Allonby Bay rMCZ Survey Report. Environment Agency. Project Code: C5784A

JNCC (2004). Common Standards Monitoring Guidance for Marine, Version August 2004, ISSN 1743-8160. Available online at: <http://jncc.defra.gov.uk/page-2236>

## Annex 3 – Charges

Defined terms within this Annex:

**E-Invoicing:** Means invoices created on or submitted to the Authority via the electronic marketplace service.

**Electronic Invoice:** Means an invoice (generally in PDF file format) issued by the Supplier and received by the Authority using electronic means, generally email.

### 1. How Charges are calculated

#### 1.1 The Charges:

1.1.1 shall be calculated in accordance with the terms of this Annex 3.

1.2 Any variation to the Charges payable under the Contract must be agreed between the Supplier and the Authority and implemented using the procedure set out in this Annex.

### 2. Rates and Prices

#### C1 Commercial response – costings

The following table details all costs associated with the project and the number of days calculated to complete each task.

The project is costed as a lumpsum price based on the calculated number of days to complete all aspects of the work as detailed in the RFQ and the estimated number of samples.

**The total price for the project is £[REDACTED] inclusive of VAT.**

The survey design and plan remain flexible and the number of camera transects and grab samples can be adjusted following review of the acoustic data or to better fit the available budget. The final survey plan, including number of samples and number of survey days would be agreed in conjunction with Natural England prior to the start of the survey.

Survey work would only be mobilised around a neap tide with a good weather forecast, and in agreement with Natural England.

Every attempt would be made to minimise the risk of delays and additional costs as a result of bad weather and poor sea conditions. During the week prior to the planned mobilisation multiple weather forecasts would be checked on a daily basis and any changes to the survey plan would be communicated to Natural England as soon as possible.

However, once mobilised the at-sea survey work would be subject to a weather standby day rate in the event of any delays encountered due to bad weather or sea conditions. During bad weather days, when either a whole or part day cannot be used to complete survey work, a weather standby rate of [REDACTED] would be charged. This is slightly less than 60% of the full survey day rate and hopefully demonstrates our willingness to share the weather risk and keep costs as low as possible for Natural England.

Given that mobilisation would only occur on a good forecast and the survey period is relatively short we do not anticipate any weather delays being for more than two or three days, if at all. If there is a sudden change in the forecast once mobilised and a prolonged period of bad weather is experienced, we would be prepared to stand-down and remobilise on a subsequent good forecast.

## Pricing Table

Description	Day/sample Rate	No.	Total
Project planning, management and HSE		~	
Equipment preparation and carriage for camera system and Hamon grab		~	
<b>Survey Operations</b>			
Vessel transit to Maryport		~	
Mobilisation of survey team and equipment		~	
Survey boat - Mariner, including skipper, mate, fuel and mooring		5	
Survey Team Leader		5	
Field Scientists x 2		5	
Survey GPS and Hypack survey management software		5	
Freshwater Lens Camera System		5	
0.1 m <sup>2</sup> Hamon grab and sub sampling equipment		5	
Consumables for macrofauna and PSA samples		~	
Food and accommodation for 4 people		5	
Demobilisation of survey team and equipment		~	
Vessel transit back to home port		~	
<b>Data Analysis and Reporting</b>			
Production of field report and survey logs		2	
Macrofauna analysis (1mm sieve) including biomass by major taxonomic group and species reference collection (following NMBAQC guidelines)		20	
PSA wet and dry sieving plus laser diffraction (following NMBAQC guidelines)		20	
Internal QC and reference collection		2	
Analysis of underwater video (ca. 200 minutes of video)		6	
Production of spreadsheets and metadata		1	
Internal QC		0.5	
GIS and production of maps (including metadata)		5	
Interpretation of results and production of final report - including statistical analysis and comparison with previous data sets		8	
Marine Recorder		2	
<b>Net total</b>			
VAT at 20%			
<b>Total price inclusive of VAT</b>			

## 3. Currency

All Supplier invoices shall be expressed in sterling, or such other currency as shall be permitted by the Authority in writing.

## 4. Variations

The Authority may make reasonable changes to its invoicing requirements during the Term after providing 30 calendar days written notice to the Supplier.

## **5. Electronic Invoicing**

- 5.1 The Authority shall accept for processing any electronic invoice that it is valid, undisputed and complies with the requirements of the Authority's e-invoicing system:
- 5.2 The Supplier shall ensure that each invoice is submitted in a PDF format and contains the following information:
  - 5.2.1 the date of the invoice;
  - 5.2.2 a unique invoice number;
  - 5.2.3 the period to which the relevant Charge(s) relate;
  - 5.2.4 the correct reference for the Contract
  - 5.2.5 a valid Purchase Order Number;
  - 5.2.6 the dates between which the Deliverables subject of each of the Charges detailed on the invoice were performed;
  - 5.2.7 a description of the Deliverables;
  - 5.2.8 the pricing mechanism used to calculate the Charges (such as fixed price, time and materials);
  - 5.2.9 the total Charges gross and net of any applicable deductions and, separately, the amount of any reimbursable expenses properly chargeable to the Authority under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same, charged at the prevailing rate;
  - 5.2.10 a contact name and telephone number of a responsible person in the Supplier's finance department and/or contract manager in the event of administrative queries; and
  - 5.2.11 the banking details for payment to the Supplier via electronic transfer of funds (i.e., name and address of bank, sort code, account name and number);
- 5.3 The Supplier shall submit all invoices and any requested supporting documentation through the Authority's e-invoicing system or if that is not possible to: Shared Services Connected Ltd, PO Box 790, Newport, Gwent, NP10 8FZ with a copy (again including any supporting documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 5.4 Invoices submitted electronically will not be processed if:
  - 5.4.1 The electronic submission exceeds 4mb in size

5.4.2 Is not submitted in a PDF formatted document

5.4.3 Multiple invoices are submitted in one PDF formatted document

5.4.4 The formatted PDF is "Password Protected"

## Annex 4 – Tender Submission

### **T1 Proposed Schedule of work.**

It is our understanding that the drop-down camera and grabbing survey work would be undertaken following the completion of the acoustic survey work, which is planned for this summer (August/September 2023). The initial results of the acoustic survey would be assessed as soon as possible following the completion of the fieldwork, and a survey plan for the drop-down camera and grabbing would then be designed in collaboration with Natural England.

The survey work would need to be undertaken over a neap tide with good weather conditions, and preferably following a period of reasonably settled weather as this will dramatically improve underwater visibility and therefore data quality.

Ideally, we would like to undertake the drop-down camera and grabbing survey work around the neap tide in late September (survey period of 22nd - 26th September 2023). However, we understand that the acoustic survey work could be delayed due to bad weather conditions or availability, and we are therefore happy to remain flexible and be available to complete the survey during suitable tide and weather conditions anytime during October or November 2023.

We would be available to have a kick-off meeting soon after the award of contract, and we would prepare and deliver initial project plans and HSE paperwork to the Natural England project manager within a couple of weeks of the meeting.

We estimate that the survey would take 5 days to complete, and we would aim to work 2 days either side of a neap tide.

The survey vessel would transit to site in the weeks preceding the survey and be available as required until the survey work is completed.

The provisional survey plan would be as follows:

- Day 1 – survey team and equipment travel to site.
- Day 2 – Equipment mobilisation and testing
- Day 3 – Camera survey
- Day 4 – Camera survey
- Day 5 – Complete camera work, swap equipment and start the grab survey.
- Day 6 – Grab survey
- Day 7 – Grab survey
- Day 8 – Equipment demobilisation
- Day 9 – survey team and equipment travel from site.



Our proposed timeline for project delivery is as follows:

Event	Date
Start-up meeting	We would like to have the start-up meeting soon after the award of contract to agree the initial survey plan and discuss any project requirements.
Finalise sampling design and produce final project plan	The final sampling design would be undertaken in collaboration with Natural England following completion of the acoustic survey work and review of the initial processed data. This will ideally happen by mid-September 2023, but we understand this could be delayed and are happy to remain flexible.
Survey to be completed by	The survey would be completed as soon as possible following the final agreed sampling design and project plan. We would undertake the survey over a neap tide with suitable weather conditions. Ideally this would be in late September, but we realise the start is dependent on other work being completed so we remain flexible.
Submission of brief field/survey report by	A field report would be submitted within 2 weeks of completion of the survey.
Complete sample processing and analysis.	The timeframe for sample processing and analysis would depend on when the survey could be undertaken. If the survey is completed in late September, we would aim to complete all sample processing and analysis by the end of January 2024. However, if the survey is delayed until November, we would aim to complete all sample processing and analysis by the end of February 2024.
Draft final report and associated products to be provided by	The timeframe for reporting would depend on when the survey could be undertaken. If the survey is completed in late September or early October, we would aim to deliver the draft report and associated products by mid-February 2024.
Final report, biotope maps and output to be delivered	The final report, biotope maps and all other outputs would be delivered within 1 week of receiving comments back from Natural England.

## T2 Availability and capacity

We can confirm that we have the availability and capacity to mobilise a suitably qualified and experienced survey team, a survey vessel, and all survey equipment to complete the work associated with this project and within the timeframes specified in the ITT.

We would be available to have a kick-off meeting soon after the award of contract, and we would prepare and deliver initial project plans and HSE paperwork to the Natural England project manager within a couple of weeks of the meeting.

As the final sampling design and survey plan are dependent on the completion of the acoustic survey work and assessment of the initial processed results, we understand that the start of the drop-down camera and grabbing survey could be delayed.



As such we would remain flexible and available to complete the survey work around a neap tide with suitable weather conditions from mid-September until the end of November 2023. We would also be available after November, but if the survey was completed after November this would impact the final delivery dates and the project would probably extend into the next financial year.

We plan on using our in-house survey vessel "Mariner" for the survey work. Mariner would transit to site prior to the initial planned mobilisation, and she would remain on site until all fieldwork is completed.

The project team will consist of an experienced vessel skipper, vessel mate/winch driver, fieldwork team leader, and 2 experienced field scientists.

The key members of the project team will be:

██████████ - ██████████ with over twenty-five years' industry experience and one of the founding partners of Seastar Survey. He has a degree which specialised in hydrographic surveying and a master's specialising in marine biology. ██████████ has extensive experience of planning, managing, and conducting field surveys, and is very experienced in the use of all survey equipment, particularly with regard to underwater camera systems, sediment sampling, and navigation equipment and software. In addition to his extensive survey experience, ██████████ is also a very experienced commercially qualified vessel skipper. ██████████ will act as project manager and lead field scientist for this survey.

██████████ - ██████████ who joined Seastar in early 2014 following completion of her integrated master's degree in Oceanography. ██████████ has undertaken numerous surveys for various commercial and government clients throughout the UK and abroad. ██████████ is a highly experienced field scientist and while she specialises in marine chemistry, performing interpretation of environmental chemical analyses of both marine and surface waters and marine and terrestrial sediments, she has gained a great deal of experience in environmental field survey work including a significant amount of time undertaking underwater camera surveys and sediment sampling and processing.

██████████ - ██████████ who joined Seastar in 2010 following completion of her master's degree. ██████████ has a great deal of experience in the collection, processing, and analysis of biological and ecological data. ██████████ possesses a good knowledge and understanding of marine biodiversity in UK waters and undertakes the majority of Seastar's video and stills analysis, including assignment of biotopes. ██████████ is also proficient in univariate and multivariate statistical analysis of biological and environmental data, and is regularly responsible for production of project deliverables, including completion of reports. ██████████ has been leading author on many reports for both government and commercial clients, and her contributions include literature reviews and EIA chapters as well as technical scientific reports.

██████████ with more than 30 years' experience in analysis of marine and estuarine fauna from around the UK. Following on from offshore fieldwork experience and a period of laboratory management, he has for the last 15 years worked as a ██████████. Projects have included work for ██████████

██████████ is a member of the ██████████ and has attended all their Expert Workshops since 2001. He has also participated in taxonomic workshops organised by Marine Ecological Surveys Ltd, Bath and Deutsches Zentrum für Marine Biodiversitätsforschung, Forschungsinstitut Senckenberg, Wilhelmshaven. In a recent publication he highlighted the re-



discovery of the American Harris Mud Crab in U.K. waters (BioInvasions Records 10(3): 644 – 653) and maintains an active interest in non-native, potentially invasive species.

## **Company Profile:**

Founded in 1999, Seastar Survey is an independent marine environmental survey company and consultancy with an office and laboratory based in Hamble, on the south coast of England. We specialise in supplying a wide range of marine environmental, oceanographic, and hydrographic services to industry and government organisations, and pride ourselves on a positive and flexible approach to all our clients' needs.

Our aim is to work directly in support of research, monitoring and commercial organisations operating in the marine environment, by offering a range of professional services based on our policy of safety and quality throughout. In conjunction with a select group of equipment suppliers and laboratories, we have the capacity to provide clients with a complete range of marine survey and consultancy services.

Our primary areas of operation include:

- Marine Environmental Surveys, including design, planning and implementation
- Specialist Underwater Photography & Analysis
- Oceanographic & Hydrographic Surveys (bathymetry and sidescan sonar)
- Intertidal and Subtidal Habitat Mapping
- Report Compilation with fully interactive GIS
- Ecological Appraisal and Classification
- Environmental Scoping and Impact Assessments
- Marine Licence Applications • Marine and Freshwater Macrofauna Sorting and Identification
- In-house Sediment Laboratory (PSA and TOC)
- Analysis and Interpretation of Chemical Data
- Scientific Diving • Current and Wave Studies
- Coastal Survey Vessel Charter Seastar

We are extremely experienced in the design, planning and implementation of marine surveys, and have been collecting, analysing, and presenting marine data for over 24 years. We regularly collect and analyse large marine datasets for a wide variety of clients including commercial companies and government agencies such as Natural England, JNCC, and NatureScot. Survey techniques regularly used include acoustic mapping (bathymetry and side-scan sonar); sediment sampling using a variety of grabs and corers; underwater video/still photography, including freshwater lens system; water sampling and water profiling; scientific trawling; and wave and current studies.

The primary focus of our survey work is the collection and analysis of marine environmental survey data for baseline and monitoring purposes, associated to a variety of project types, including site condition assessments of marine protected areas; habitat mapping and monitoring of conservation features; and the collection of environmental data to inform project planning, marine licence applications and environmental impact assessments.

We have more than 25 years' experience of operating and manning survey vessels and workboats, and we often conduct inshore surveys from our own survey vessels. We operate three coastal survey boats, which are able to cover all UK inshore waters up to 60 nautical miles from a safe haven, and we also charter other vessels as and when required. All of our crew are highly skilled in vessel operations and also have a high level of understanding of marine science, and therefore fully understand the needs of the surveyor and scientist.

Recent clients include:





Figure 1. Survey Vessel Mariner

The survey area is assumed to be all subtidal areas of Allonby Bay HPMA. Sampling design and survey planning would be undertaken in collaboration with Natural England following interpretation of the processed acoustic survey data, which is due to be acquired this summer.

We are proposing the use of a Freshwater Lens Camera (FWLC) system and a 0.1 m<sup>2</sup> Hamon grab to complete the required survey work and meet the aims and objectives of the contract as detailed in the RFQ.

The underwater camera survey work would be completed prior to the grab sampling work, and the results of the camera survey would help direct the final sampling locations for the grab survey. If a sampling location was seen to be on a seabed type not suitable for grab sampling this location would be moved in consultation with Natural England.

The proposed camera work would take 2 days to complete, and we would undertake a total of 20 video transects across the survey area with the primary aim of ground truthing the acoustic data in order to develop broadscale habitat maps. The FWLC is equipped with a high-definition video camera and 4 LED video lights. The camera also has a scale which can be seen on the image when the camera is landed on the seabed. The FWLC does not offer still photographs and does not have laser scaling, but our experience has shown that the setup of our FWLC offers the best results in very turbid (low visibility) conditions. Example images from our FWLC can be supplied on request. On each of the camera transects we would collect data at 10 separate drop locations, resulting in 200 separate samples and around 200 minutes of video footage from across the whole site.

The grab sampling work is expected to take 2.5 days to complete. On the morning of day 3 the camera system would be demobilised and the Hamon grab mobilised on the back deck of the survey boat. The grab sampling work would then commence on the afternoon of day 3.

We have provisionally planned to collect 20 sediment samples using the Hamon grab. This is based on our expectation that there will be 5 habitat types within the survey area, comprising muddy sand, sand, mixed sediments, coarse sediments, and stony reef. In order to deliver a statistically robust dataset we have calculated that a minimum of 4 samples would be required from each habitat type.

As the survey site is exposed and subject to strong tidal flows, the survey would only be mobilised on a good weather forecast that coincides with a neap tide. We would make best use of any slack water periods and aim to collect samples in the area where the currents are strongest during the slack water.

## **Survey Equipment and Methods**

### **Drop-down Camera Survey**

The drop-down camera survey work would be undertaken using Seastar's in-house Freshwater Lens Camera (FWLC) system deployed from the survey vessel's A-frame and using the vessel's hydraulic winch.

The camera system will comprise the following components:

- Seastar in-house designed FWLC frame
- High-definition video camera
- 4 x subsea LED video lamps
- 100 m multifunction umbilical
- Digital video recorder with video overlay

The vessel position and heading will be obtained via a RTK GPS (positional accuracy  $\pm 0.03$  m) and recorded using Hypack survey management software. An offset to the vessel's A-frame position would then be measured and a positional correction applied in the survey management software.

Positioning of the camera frame will be calculated as a lay-back from the vessel's A-frame and based on the vessel's known position, vessel heading, vessel speed, water depth, height of the A-frame, and the amount of winch wire deployed. This method of positioning the camera, in shallow water depths, is accurate to around  $\pm 3$  m.

The vessel's position and heading along with the calculated camera position will be recorded in the survey management software throughout each deployment. All navigation data would be collected and logged in WGS84 Latitude and Longitude (decimal degrees) and converted to UTM North Zone 30 grid coordinates within Hypack. A known local position would be obtained prior to the start of the survey, and a navigation check would be performed against this known location at the start and at the end of each survey day.

Prior to camera deployment the skipper will position the vessel at the start of the transect line and into the prevailing tide. At 10 locations along the line the camera would be lowered to the seabed and allowed to settle. Approximately 1 minute of high-resolution video footage would then be collected at each location. At the end of each survey day, all survey navigation data, and the HD video will be backed-up onto an external hard drive and removed from the vessel.

### **Benthic Grab Sampling Survey**

At each sampling station the vessel will set up on the proposed position and a 0.1 m<sup>2</sup> Hamon grab sampler will be deployed over the side of the vessel.

Once the grab is at the seabed a "fix" of position and time will be recorded in Hypack and manually logged in the survey logbook. The recorded "fix" position will be the position of the vessel's A-frame, which will be based on a measured offset between the GPS location and the A-frame plus the GPS position and vessel heading.

The grab will then be recovered to deck and the sample inspected for quality. Samples may be rejected on the grounds of poor quality for the following reasons:

- Uneven surface indicative of striking the seabed at an angle;
- Disturbed surface sediment;
- Contamination of the sediment (e.g., hagfish, paint chips, oil etc.);
- Sample

If the sample is not acceptable the vessel will be repositioned on station and the grab redeployed. If after three attempts at a station a successful grab has not been collected a new location will be chosen close to the original station and within the same region. If the sample is deemed to be acceptable the sample will be processed. A brief description of the sediment will be recorded, including appearance, texture, colour, and odour, as well as any other notable observations, and a labelled photograph taken.

Sampling of PSA will follow the NMBAQC's Best Practice Guidance for PSA to support biological analysis (Mason, 2016). A subsample for PSA will be taken using a metal scoop to remove a 5 cm deep core from the grab sample, ensuring that at least 200 ml of sediment is collected. Any conspicuous biota will be noted in the logbook and removed from the subsample before storing the sediment in labelled plastic bags. Following subsampling for PSA the rest of the grab sample will be processed for macrobenthic invertebrate analysis. The sediment in the grab will be transferred into a dump tray and the grab sampler washed out with seawater to ensure nothing is left behind. The sediment in the dump tray will then be gently washed over a 1.0 mm field sieve. The sediment sample retained in the field sieve will be photographed and then transferred into a labelled plastic bucket and fixed using a 4 % buffered formaldehyde-seawater solution for later analysis.

Samples would be returned to our laboratory and processing would start as soon as possible following completion of the survey. All sample processing would be undertaken following the guidelines of the NMBAQC scheme. Full details of our methods for analysis of samples and video data can be supplied if required.

## **Additional Information**

Additional company information relating to our Health and Safety policy, environmental policy and quality assurance methods can be supplied if required.

## **T4 Collaboration with acoustic survey company**

We would ask that Natural England introduce us to the project manager and other key members of staff from the acoustic survey company as soon as possible following the award of contract. This could possibly be facilitated by a short Teams meeting to discuss the wider aims of the project and get an understanding of the project plan and timeframe for the acoustic survey work, as well as agreeing data formats and timeline for the delivery of the processed acoustic data.

We would ensure that the acoustic survey company had contact details for the key members of the project team at Seastar Survey and we would agree regular updates on progress and reporting of any delays and issues encountered during the project.

We would stay in regular contact with Natural England and the acoustic survey company to discuss any issues and keep up to date with the expected delivery date of the acoustic data in order to develop a suitable survey plan for the drop-down camera and grabbing work.

Ideally, the acoustic survey company would deliver the processed data as soon as possible after the completion of the survey work in previously agreed formats to enable easy analysis of the data and development of a sampling design and survey plan. It would be a good idea to have a Teams meeting with the acoustic survey company and Natural England following the delivery of the data to discuss data interpretation, initial seabed characterisation and the proposed sampling plan. At this meeting any logistical or environmental issues experienced during the acoustic survey could be discussed as this would help with the final survey plan for the drop-down camera and grabbing survey work

## Annex 5 – Sustainability

### 1 Sustainability

1.1 The Supplier must comply with the Authority's Sustainability Requirements set out in this Contract. The Supplier must ensure that all Supplier Staff and subcontractors who are involved in the performance of the Contract are aware of these requirements in accordance with clauses 8.1(c) and 13.2.

1.2 The Authority requires its suppliers and subcontractors to meet the standards set out in the Supplier Code of Conduct in accordance with clause 13.1(c).

1.3 The Supplier must comply with all legislation as per clause 13.1.

### 2 Human Rights

2.1 The Authority is committed to ensuring that workers employed within its supply chains are treated fairly, humanely, and equitably. The Authority requires the Supplier to share this commitment and to take reasonable and use reasonable and proportionate endeavours to identify any areas of risk associated with this Contract to ensure that it is meeting the International Labour Organisation International Labour Standards which can be found online - Conventions and Recommendations (ilo.org) and at a minimum comply with the Core Labour Standards, encompassing the right to freedom of association and collective bargaining, prohibition of forced labour, prohibition of discrimination and prohibition of child labour.

2.2 The Supplier must ensure that it and its sub-contractors and its [or their] supply chain:

2.2.1 pay staff fair wages and

2.2.2 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.

3 Equality, Diversity and Inclusion (EDI) 3.1 The Supplier will support the Authority to achieve its Public Sector Equality Duty by complying with the Authority's policies (as amended from time to time) on EDI. This includes ensuring that the Supplier, Supplier Staff, and its subcontractors in the delivery of its obligations under this Contract:

3.1.1 do not unlawfully discriminate either directly or indirectly because of race, colour, ethnic or national origin, disability, sex, sexual orientation, gender reassignment, religion or belief, pregnancy and maternity, marriage and civil partnership or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010.

3.1.2 will not discriminate because of socio-economic background, working pattern or having parental or other caring responsibilities.

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

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

3.1.5 foster good relations between people who share a protected characteristic and people who do not share it;

3.1.6 identifies and removes EDI barriers which are relevant and proportionate to the requirement; and

3.1.6 shall endeavour to use gender-neutral language when providing the Deliverables and in all communications in relation to the Contract.

#### 4 Environment

4.1 The Supplier shall ensure that any Goods or Services are designed, sourced, and delivered in a manner which is environmentally responsible and in compliance with paragraph 1.3 of this Annex;

4.2 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority ensure the reduction of whole life cycle sustainability impacts including;

4.2.1 resilience to climate change;

4.2.2 eliminating and/or reducing embodied carbon;

4.2.3 minimising resource consumption and ensuring resources are used efficiently;

4.2.4 avoidance and reduction of waste following the waste management hierarchy as set out in Law and working towards a circular economy;

4.2.5 reduction of single use consumable items (including packaging), and avoidance of single use plastic in line with Government commitments;

4.2.6 environmental protection (including pollution prevention, biosecurity and reducing or eliminating hazardous substances; and

4.2.7 compliance with Government Buying Standards applicable to Deliverables and using reasonable endeavours to support the Authority in meeting applicable Greening Government Commitments.

#### 5 Social Value

5.1 The Supplier will support the Authority in highlighting opportunities to provide wider social, economic, or environmental benefits to communities through the delivery of the Contract.

5.2 The Supplier will ensure that supply chain opportunities are inclusive and accessible to:

5.2.1 new businesses and entrepreneurs;

5.2.2 small and medium enterprises (SMEs);

5.2.3 voluntary, community and social enterprise (VCSE) organisations;

5.2.4 mutuals; and

5.2.5 other underrepresented business groups.



# Short Form Terms

## 1. Definitions used in the Contract

In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

"Authority"	means the <a href="#">authority</a> identified in paragraph 3 of the Order Form;
"Authority Data"	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Authority; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Authority is the Data Controller;
"Authority Cause"	any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Authority is liable to the Supplier;
"Central Government Body"	for the purposes of this Contract this means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>• Government Department;</li><li>• Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>• Non-Ministerial Department; or</li><li>• Executive Agency;</li></ul>
"Charges"	means the charges for the Deliverables as specified in the Order Form and Annex 3;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is agreed by the Parties to be confidential;

"Contract"	means this contract between (i) the Authority and (ii) the Supplier which is created by the Supplier signing the Order Form and returning it to the Authority.
"Controller"	has the meaning given to it in the "UK GDPR";
"Crown Body"	means any department, office or agency of the Crown, including any and all Local Authority bodies;
"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 UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 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;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR;
"Data Subject Access 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;
"Date of Delivery"	means that date by which the Deliverables must be delivered to the Authority, as specified in the Order Form;
"Deliver"	means handing over the Deliverables to the Authority at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with Clause 4. Delivered and Delivery shall be construed; accordingly,
"Deliverables"	Goods and/or Services that may be ordered under the Contract including the Documentation;

"Documentation"	descriptions of the Services, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) that is required to be supplied by the Supplier to the Authority under the Contract as: a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables b) is required by the Supplier in order to provide the Deliverables; and/or c) has been or shall be generated for the purpose of providing the Deliverables;
"Existing IPR"	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
"Expiry Date"	means the date for expiry of the Contract as set out in the Order Form;
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"Goods"	means the goods to be supplied by the Supplier to the Authority under the Contract;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the law and the exercise of 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 within the relevant industry or business sector;
"Information"	has the meaning given under section 84 of the FOIA;

"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	occurs in respect of a legal person (for example an individual, company or organisation): i) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; or iv) if the person makes any arrangement with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction whether under the Insolvency Act 1986 or otherwise;
"IP Completion Day"	has the meaning given to it in the European Union (Withdrawal) Act 2018;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Authority to the Supplier in writing;
"Law"	means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, 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 Parties are bound to comply;
"New IPR"	all and any intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
"Order Form"	means the letter from the Authority to the Supplier printed above these terms and conditions;
"Party"	the Supplier or the Authority (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the UK GDPR;
"Personal Data Breach"	has the meaning given to it in the UK GDPR;
"Processing"	has the mean given to it in the UK GDPR;
"Processor"	has the meaning given to it in the UK GDPR;
"Purchase Order Number"	means the Authority's unique number relating to the order for Deliverables to be supplied by the Supplier to the Authority in accordance with the terms of the Contract;

"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Services"	means the services to be supplied by the Supplier to the Authority under the Contract;
"Specification"	means the specification for the Deliverables to be supplied by the Supplier to the Authority (including as to quantity, description and quality) as specified in Annex 2;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, the Authority's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Start Date"	Means the start date of the Contract set out in the Order Form;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any subcontractor engaged in the performance of the Supplier's obligations under the Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Sustainability Requirements"	means any relevant social or environmental strategies, policies, commitments, targets, plans or requirements that apply to and are set out in the Annex 5;
Tender Submission	means the Supplier's response to the invitation to the bidder pack (including, for the avoidance of doubt, any clarification provided by the Supplier).
"Term"	means the period from the Start Date to the Expiry Date as such period may be extended in accordance with the Order Form or terminated in accordance with Clause 11;
"UK GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4));

"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Workers"	any one of the Supplier Staff which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2. Understanding the Contract

In the Contract, unless the context otherwise requires:

2.1 references to numbered clauses are references to the relevant clause in these terms and conditions and references to numbered paragraphs are references to the paragraph in the relevant Annex;

2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;

2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;

2.5 the singular includes the plural and vice versa;

2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or bylaw made under that law;

2.7 any reference in this Contract which immediately before the IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):

- i. any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area ("EEA") agreement ("EU References") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- ii. any EU institution or EU authority or other such EU body shall be read on and after the date of exit from the EU as a reference to the UK institution, authority or body to which its functions were transferred.



2.8 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";

2.9 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

2.10 any Annexes form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Annexes; and

2.11 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.

### **3. How the Contract works**

3.1 The Order Form is an offer by the Authority to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.

3.2 The Supplier is deemed to accept the offer in the Order Form when the Authority receives a copy of the Order Form signed by the Supplier.

3.3 The Supplier warrants and represents that its Tender Submission and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### **4. What needs to be delivered**

#### **4.1 All Deliverables**

(a) The Supplier must provide Deliverables: (i) in accordance with the Specification and Tender Submission; (ii) to a professional standard; (iii) using all reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) in accordance with such policies and procedures of the Authority (as amended from time to time) that may be specified in the Contract (vii) on the dates agreed; and (viii) in compliance with all applicable Law.

(b) Without prejudice to the Specification the Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to the Authority) from Delivery against all obvious damage or defects.

#### **4.2 Goods clauses**

(a) All Goods Delivered must be capable of meeting the requirements set out in the Specification and be either (i) new and of recent origin, (ii) reused or (iii) recycled.

(b) All manufacturer warranties covering the Goods will be assigned to the Authority on request and for free.

(c) The Supplier transfers ownership of the Goods on completion of Delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.

(d) Risk in the Goods transfers to the Authority on Delivery but remains with the Supplier if the Authority notices any damage or defect following Delivery and lets the Supplier know within three Working Days of Delivery.

(e) The Supplier must have full and unrestricted ownership of the Goods at the time of transfer of ownership.

(f) The Supplier must Deliver the Goods on the date and to the specified location during the Authority's working hours.

(g) The Supplier, its subcontractor(s) and supply chain must minimise packaging used whilst providing sufficient packaging for the Goods to reach the point of Delivery safely and undamaged. The Supplier must take back any primary packaging where it is possible to do so. Packaging must be 100% re-usable, recyclable or compostable, use recycled content where reasonably practicable and support the Government's commitment to eliminate single use plastic.

(h) All Deliveries must have a delivery note attached that specifies the order number, type, quantity of Goods, contact and details of traceability through the supply chain.

(i) The Supplier must provide all tools, information and instructions the Authority needs to make use of the Goods. This will include, where appropriate, any operation manuals which, unless specified otherwise, will be written in English and provided in electronic form.

(j) The Supplier will notify the Authority of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Authority against the costs arising as a result of any such request. Goods must be disposed of in line with the waste management hierarchy as set out in Law. The Supplier will provide evidence and transparency of the items and routes used for disposal to the Authority on request.

(k) The Authority can cancel any order or part order of Goods which have not been Delivered. If the Authority gives less than 14 calendar days' notice, then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.

(l) The Supplier must at its own cost repair, replace, refund or substitute (at the Authority's option and request) any Goods that the Authority rejects because they don't conform with clause 4.2. If the Supplier doesn't do this, it will pay the Authority's costs including repair or re-supply by a third party.

(m) The Authority will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third-party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Authority or its servant or agent. If the Authority suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify from all losses, damages, costs or expenses (including professional fees and fines) which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or, where related to the Contract, any of its subcontractors or suppliers.

### 4.3 Services clauses

- (a) Late delivery of the Services will be a breach of the Contract.
- (b) The Supplier must co-operate with the Authority and third-party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) The Authority must provide the Supplier Staff with reasonable access to its premises at such reasonable times agreed with the Authority for the purpose of supplying the Services.
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Authority to the Supplier for supplying the Services remains the property of the Authority and is to be returned to the Authority on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Authority's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Authority's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Authority's premises or property, other than fair wear and tear and any pre-existing cleanliness, safety or tidiness issue at the Authority's premises that existed before the commencement of the Term.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of the required quality and free from damage or defects.
- (i) The Authority is entitled to withhold payment for partially or undelivered Services or for Services which are not delivered in accordance with the Contract but doing so does not stop it from using its other rights under the Contract.

## 5. Pricing and payments

5.1 In exchange for the Deliverables delivered, the Supplier shall be entitled to invoice the Authority for the charges in Annex 3. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.

5.2 All Charges:

- (a) exclude VAT, which is payable on provision of a valid VAT invoice and charged at the prevailing rate;
- (b) include all costs connected with the supply of Deliverables.

5.3 The Authority must pay the Supplier the charges within 30 days of receipt by the Authority of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.

5.4 A Supplier invoice is only valid if it:

(a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Authority as set out in Annex 3; and

(b) includes a detailed breakdown of Deliverables which have been delivered (if any).

Details of the Authority's requirements for a valid invoice at the Start Date are set out in Annex 3.

5.5 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 35.

5.6 If any sum of money is recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which may become due, to the Supplier under the Contract or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

5.7 The Supplier must ensure that its subcontractors and supply chain are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Authority can publish the details of the late payment or non-payment.

## 6. The Authority's obligations to the Supplier

6.1 If the Supplier fails to comply with the Contract as a result of an Authority Cause:

(a) the Authority cannot terminate the Contract under clause 11 on account of the failure to comply, provided this will not prejudice the Authority's right to terminate for another cause that may exist at the same time;

(b) the Supplier will be relieved from liability for the performance of its obligations under the Contract to the extent that it is prevented from performing them by the Authority Cause and will be entitled to such reasonable and proven additional expenses that arise as a direct result of the Authority Cause;

(c) the Supplier is entitled to any additional time needed to deliver the Deliverables as a direct result of the Authority's Cause;

(d) the Supplier cannot suspend the ongoing supply of Deliverables.

6.2 Clause 6.1 only applies if the Supplier:

(a) gives notice to the Authority within 10 Working Days of becoming aware of an Authority Cause, such notice setting out in detail with supporting evidence the known reasons for the Authority Cause;

(b) demonstrates that the failure only happened because of the Authority Cause;

(c) has used all reasonable endeavours to mitigate the impact of the Authority Cause.

## 7. Record keeping and reporting

7.1 The Supplier must ensure that suitably qualified (and authorised) representatives attend progress meetings with the Authority and provide progress reports when specified in Annex 2.

7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.

7.3 The Supplier must allow any auditor appointed by the Authority access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.

7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.

7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- (a) tell the Authority and give reasons;
- (b) propose corrective action;
- (c) agree a deadline with the Authority for completing the corrective action.

7.6 If the Authority, acting reasonably, is concerned either:

- (a) as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract; or
- (b) as to the sustainability or health and safety conduct of the Supplier, subcontractors and supply chain in the performance of the Contract;

then the Authority may:

- (i) require that the Supplier provide to the Authority (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract (in the case of (a)) or improve its sustainability conduct or performance (in the case of (b)) and the Supplier will make changes to such plan as reasonably required by the Authority and once it is agreed then the Supplier shall act in accordance with such plan and report to the Authority on demand
- (ii) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Authority or materially fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Authority notifies).

## 8. Supplier staff

8.1 The Supplier Staff involved in the performance of the Contract must:

- a) be appropriately trained and qualified;

- b) be vetted using Good Industry Practice and in accordance with the instructions issued by the Authority in the Order Form;
- c) comply with the Authority's conduct requirements when on the Authority's premises including, without limitation, those Sustainability Requirements relating to Equality, Diversity & Inclusion (EDI) contained in Annex 5; and
- d) be informed about those specific requirements referred to in Clause 13.2.

8.2 Where an Authority decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.

8.4 The Supplier must provide a list of Supplier Staff needing to access the Authority's premises and say why access is required.

8.5 The Supplier indemnifies the Authority against all losses, damages, costs or expenses (including professional fees and fines) arising from claims brought against it by any Supplier Staff caused by an act or omission of the Supplier or any other Supplier Staff.

8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires or dies or is on maternity, adoption, shared parental leave or long-term sick leave; or
- (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated.

## 9. Rights and protection

9.1 The Supplier warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform the Contract;
- (b) the Contract is executed by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
- (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
- (g) it is not impacted by an Insolvency Event.



9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

9.3 The Supplier indemnifies the Authority against each of the following:

- (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
- (b) non-payment by the Supplier of any tax or National Insurance.

9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Authority.

9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Authority's benefit by the Supplier.

## 10. Intellectual Property Rights (IPRs)

10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:

- (a) receive and use the Deliverables;
- (b) use the New IPR.

10.2 Any New IPR created under the Contract is owned by the Authority. The Authority gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.

10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.

10.5 If any claim is made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Authority's sole option, either:

- (a) obtain for the Authority the rights in clauses 10.1 and 10.2 without infringing any third-party intellectual property rights;
- (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

## 11. Ending the contract

11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

11.2 The Authority can extend the Contract were set out in the Order Form in accordance with the terms in the Order Form.

### Ending the Contract without a reason

11.3 The Authority has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if the Contract is terminated, clause 11.5(b) to 11.5(g) applies.

### When the Authority can end the Contract

11.4 (a) If any of the following events happen, the Authority has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:

- (i) there is a Supplier Insolvency Event;
- (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify in the Authority's opinion that the Supplier's conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
- (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied. Where a material breach is not capable of remedy, the Authority has the right to immediately terminate the Contract;
- (iv) there is a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Authority in writing;
- (v) if the Authority discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
- (vi) the Supplier or its affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them;
- (vii) where a right to terminate described in clause 27 occurs;
- (viii) the Supplier is in breach of any of its health, safety and well-being obligations under clause 28.1(a); and
- (ix) where, in accordance with clause 33.3, there is or may be an actual or potential conflict of interest.

(b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Authority has the right to immediately terminate the Contract and clause 11.5(a) to 11.5(g) applies.

### **11.5 What happens if the Contract ends**

Where the Authority terminates the Contract under clause 11.4 all of the following apply:

- (a) the Supplier is responsible for the Authority's reasonable costs of procuring replacement deliverables for the rest of the Term ;
- (b) the Authority's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Authority Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Authority's property provided under the Contract;
- (f) the Supplier must, at no cost to the Authority, give all reasonable assistance to the Authority and any incoming supplier and co-operate fully in the handover and re-procurement;
- (g) the following clauses survive the termination of the Contract: 3.3, 7.2, 7.3, 7.4, 9, 10, 12, 13.3, 14, 15, 16, 17, 18, 19, 20, 32, 35, 36 and any clauses or provisions within the Order Form or the Annexes which are expressly or by implication intended to continue.

### **11.6 When the Supplier can end the Contract**

- (a) The Supplier can issue a reminder notice if the Authority does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Authority fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 11.6(a):
  - (i) the Authority must promptly pay all outstanding charges incurred to the Supplier;
  - (ii) the Authority must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with satisfactory evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
  - (iii) clauses 11.5(d) to 11.5(g) apply.

### **11.7 Partially ending and suspending the Contract**

- (a) Where the Authority has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Authority suspends the Contract, it can provide the Deliverables itself or buy them from a third party.

(b) The Authority can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.

(c) The Parties must agree (in accordance with clause 25) any necessary variation required by clause 11.7, but the Supplier may neither:

(i) reject the variation; nor

(ii) increase the Charges, except where the right to partial termination is under clause 11.3.

(d) The Authority can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

## 12. How much you can be held responsible for

12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than the value of the Charges or £5,000,000 (five million pounds) [whichever is higher] unless specified in the Order Form.

12.2 No Party is liable to the other for:

(a) any indirect losses;

(b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:

(a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;

(b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;

(c) any liability that cannot be excluded or limited by law.

12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.3, 15.28(e) or 31.2(b).

12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including where the loss or damage is covered by any indemnity.

12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## 13. Obeying the law

13.1 The Supplier must, in connection with provision of the Deliverables:

(a) comply with all applicable Law;

(b) comply with the Sustainability Requirements

- (c) use reasonable endeavours to comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

13.2 The Sustainability Requirements and the requirements set out in Clause 27, 28 and 30 must be explained to the Supplier's Staff, subcontractors and suppliers who are involved in the performance of the Supplier's obligations under the Contract and where it is relevant to their role and equivalent obligations must be included in any contract with any suppliers or subcontractor that is connected to the Contract.

13.3 The Supplier indemnifies the Authority against all losses, damages, costs or expenses (including professional fees and fines) resulting from any default by the Supplier relating to any applicable Law to do with the Contract.

13.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with the Law and its obligations under the Contract.

13.5 "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal and other obligations under the Contract.

13.6 The Supplier will provide such evidence of compliance with its obligations under this Clause 13 as the Authority reasonably requests.

## 14. Insurance

14.1 The Supplier must, at its own cost, obtain and maintain the required insurances as set out in the Order Form.

14.2 The Supplier will provide evidence of the required insurances on request from the Authority.

## 15. Data protection

15.1 The Authority is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.

15.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.

15.3 The Supplier shall take all reasonable measures relating to the security of processing which are required pursuant to Article 32 of the UK GDPR including, without limitation, those security measures specified in this clause 15.

15.4 The Supplier must not remove any ownership or security notices in or relating to the Authority Data.

15.5 The Supplier must make accessible back-ups of all Authority Data, stored in an agreed off-site location and send the Authority copies every six Months.

15.6 The Supplier must ensure that any Supplier system holding any Authority Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Authority.

15.7 If at any time the Supplier suspects or has reason to believe that the Authority Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and immediately suggest remedial action.

15.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either or both:

- (a) tell the Supplier to restore or get restored Authority Data as soon as practical but no later than five Working Days from the date that the Authority receives notice, or the Supplier finds out about the issue, whichever is earlier;

- (b) restore the Authority Data itself or using a third party.

15.9 The Supplier must pay each Party's reasonable costs of complying with clause 15.8 unless the Authority is at fault.

15.10 Only the Authority can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex 1 of the Order Form (*Authorised Processing*).

15.11 The Supplier must only process Personal Data if authorised to do so in the Annex to the Order Form (*Authorised Processing*) by the Authority. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 of the Order Form.

15.12 The Supplier must give all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment before starting any processing, including:

- (a) a systematic description of the expected processing and its purpose;

- (b) the necessity and proportionality of the processing operations;

- (c) the risks to the rights and freedoms of Data Subjects;

- (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.

15.13 The Supplier must notify the Authority immediately if it thinks the Authority's instructions breach the Data Protection Legislation.

15.14 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Authority.

15.15 If lawful to notify the Authority, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.

15.16 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier 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 15;



(b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;

(c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise allowed by the Contract;

(d) have undergone adequate training in the use, care, protection and handling of Personal Data.

15.17 The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:

(a) it has obtained prior written consent of the Authority;

(b) the Authority has decided that there are appropriate safeguards (in accordance with Article 46 of the UK GDPR);

(c) the Data Subject has enforceable rights and effective legal remedies when transferred;

(d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

(e) where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help the Authority meet its own obligations under Data Protection Legislation; and

(f) the Supplier complies with the Authority's reasonable prior instructions about the processing of the Personal Data.

15.18 The Supplier must notify the Authority immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access 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 in connection with Personal Data processed under this Contract;

(e) receives a request from any third party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;

(f) becomes aware of a Data Loss Event.

15.19 Any requirement to notify under clause 15.17 includes the provision of further information to the Authority in stages as details become available.

15.20 The Supplier must promptly provide the Authority with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.17. This includes giving the Authority:

- (a) full details and copies of the complaint, communication or request;
- (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
- (c) any Personal Data it holds in relation to a Data Subject on request;
- (d) assistance that it requests following any Data Loss Event;
- (e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.

15.21 The Supplier must maintain full, accurate records and information to show it complies with this clause 15. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Authority determines that the processing:

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

15.22 The Supplier will make available to the Authority all information necessary to demonstrate compliance with clause 15 and allow for and contribute to audits, including inspections, conducted by the Authority or another auditor appointed by the Authority.

15.23 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Contract and give the Authority their contact details.

15.24 Before allowing any Subprocessor to process any Personal Data, the Supplier must:

- (a) notify the Authority in writing of the intended Subprocessor and processing;
- (b) obtain the written consent of the Authority;
- (c) enter into a written contract with the Subprocessor so that this clause 15 applies to the Subprocessor;
- (d) provide the Authority with any information about the Subprocessor that the Authority reasonably requires.

15.25 The Supplier remains fully liable for all acts or omissions of any Subprocessor.

15.26 At any time the Authority can, with 30 Working Days' notice to the Supplier, change this clause 15 to:

(a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under UK GDPR Article 42;

(b) ensure it complies with guidance issued by the Information Commissioner's Office.

15.27 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.

15.28 The Supplier:

(a) must provide the Authority with all Authority Data in an agreed open format within 10 Working Days of a written request;

(b) must have documented processes to guarantee prompt availability of Authority Data if the Supplier stops trading;

(c) must securely destroy all storage media that has held Authority Data at the end of life of that media using Good Industry Practice;

(d) must securely erase or return all Authority Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it;

(e) indemnifies the Authority against any and all losses, damages, costs or expenses (including professional fees and fines) incurred if the Supplier breaches clause 15 and any Data Protection Legislation.

## 16. What you must keep confidential

16.1 Each Party must:

(a) keep all Confidential Information it receives confidential and secure;

(b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;

(c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

16.2 In spite of clause 16.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

(a) where disclosure is required by applicable law, permitted in respect of an audit pursuant to clause 7.3, or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

(b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;

(c) if the information was given to it by a third party without obligation of confidentiality;

(d) if the information was in the public domain at the time of the disclosure;

(e) if the information was independently developed without access to the disclosing Party's Confidential Information;

(f) to its auditors or for the purposes of regulatory requirements;

(g) on a confidential basis, to its professional advisers on a need-to-know basis;

(h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

16.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Authority at its request.

16.4 The Authority may disclose Confidential Information in any of the following cases:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any organisation that the Authority transfers or proposes to transfer all or any part of its business to;

(c) if the Authority (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;

(d) where requested by Parliament; and/or

(e) under clauses 5.7 and 17.

16.5 For the purposes of clauses 16.2 to 16.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 16.

16.6 Information which is exempt from disclosure by clause 17 is not Confidential Information.

16.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

16.8 Where essential to comply with or carry out their statutory functions the Authority may disclose Confidential Information.

## 17. When you can share information

17.1 The Supplier must tell the Authority within 48 hours if it receives a Request For Information.

17.2 Within the required timescales the Supplier must give the Authority full co-operation and information needed so the Authority can:

(a) comply with any Freedom of Information Act (FOIA) request;

(b) comply with any Environmental Information Regulations (EIR) request.

17.3 The Authority may talk to the Supplier to help it decide whether to publish information under clause 17. However, the extent, content and format of the disclosure is the Authority's decision, which does not need to be reasonable.

## **18. Invalid parts of the contract**

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

## **19. No other terms apply**

The provisions expressly incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

## **20. Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **21. Circumstances beyond your control**

21.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

- (a) provides written notice to the other Party;
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

21.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event and the impact of such event lasts for 90 days continuously.

21.3 Where a Party terminates under clause 21.2:

- (a) each party must cover its own losses;
- (b) clause 11.5(b) to 11.5(g) applies.

## **22. Relationships created by the contract**

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## 23. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

## 24. Transferring responsibilities

24.1 The Supplier cannot assign the Contract, or any rights under it, without the Authority's written consent.

24.2 The Authority can assign, novate or transfer its Contract or any part of it to any Crown Body, any contracting authority within the meaning of the Regulations or any private sector body which performs the functions of the Authority.

24.3 When the Authority uses its rights under clause 24.2 the Supplier must enter into a novation agreement in the form that the Authority specifies.

24.4 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

24.5 If the Authority asks the Supplier for details about its subcontractors and/or supply chain, the Supplier must provide such details as the Authority reasonably requests including, without limitation:

- (a) their name;
- (b) the scope of their appointment; and
- (c) the duration of their appointment.

## 25. Changing the contract

25.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. No oral modifications to the Contract shall be effective. The Authority is not required to accept a variation request made by the Supplier.

## 26. How to communicate about the contract

26.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

26.2 Notices to the Authority or Supplier must be sent to their address in the Order Form.

26.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## 27. Preventing fraud, bribery and corruption

27.1 The Supplier shall not:

- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);



(b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Authority or any other public body) 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 any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.

27.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 27.1 and any fraud by the Supplier, Supplier Staff (including its shareholders, members and directors), any subcontractor and the Supplier's supply chain in connection with the Contract. The Supplier shall notify the Authority immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

27.3 If the Supplier or the Supplier Staff engages in conduct prohibited by clause 27.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Authority) the Authority may:

- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Authority throughout the remainder of the Contract; or
- (b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

## 28. Health, safety and wellbeing

28.1 The Supplier must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety;
- (b) the Authority's current health and safety policy and procedures while at the Authority's premises, as provided to the Supplier.
- (c) the Authority's current wellbeing policy or requirements while at the Authority's premises as provided to the Supplier.

28.2 The Supplier and the Authority must as soon as possible notify the other of any health and safety incidents, near misses or material hazards they're aware of at the Authority premises that relate to the performance of the Contract.

28.3 Where the Services are to be performed on the Authority's premises, the Authority and Supplier will undertake a joint risk assessment with any actions being appropriate, recorded and monitored.

28.4 The Supplier must ensure their health and safety policy statement and management arrangements are kept up to date and made available to the Authority on request.

28.5 The Supplier shall not assign any role to the Authority under the Construction (Design and Management) Regulations 2015 (as amended) (the 'CDM Regulations') without the Authority's prior express written consent (which may be granted or withheld at the Authority's absolute discretion). For the avoidance of doubt so far as the Authority may fall within the role of client as

defined by the CDM Regulations in accordance with CDM Regulation 4(8) the parties agree that the Supplier will be the client.

## 29. Business Continuity

29.1 The Supplier will have a current business continuity plan, which has assessed the risks to its business site/s and activities both directly and with regards to reliance on the supply chain and will set out the contingency measures in place to mitigate them and adapt. As part of this assessment, the Supplier will take into account the business continuity plans of the supply chain. The Supplier's business continuity plan must include (where relevant), an assessment of impacts relating to extreme weather, a changing average climate and/or resource scarcity.

29.2 The Supplier's business continuity plan will be reviewed by the Supplier at regular intervals and after any disruption. The Supplier will make the plan available to the Authority on request and comply with reasonable requests by the Authority for information.

## 30. Whistleblowing

30.1 The Authority's whistleblowing helpline must be made available to the Supplier and Supplier Staff, subcontractors and key suppliers in the supply chain in order to report any concerns.

30.2. The Supplier agrees:

(a) to insert the following wording into their whistleblowing policy and communicate to all staff:

"If you feel unable to raise your concern internally and it relates to work being carried out for which the ultimate beneficiary (through a contractual chain or otherwise) is Defra group, please email [Whistleblowing@Defra.gov.uk](mailto:Whistleblowing@Defra.gov.uk)."

(b) to ensure that their Sub-contractors have free access to the Authority's whistleblowing policy.

## 31. Tax

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Authority cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:

(a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;

(b) indemnify the Authority against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

31.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- (a) the Authority may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 31.2, or why those requirements do not apply, the Authority can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Authority's request if the Worker fails to provide the information requested by the Authority within the time specified by the Authority;
- (c) the Worker's contract may be terminated at the Authority's request if the Worker provides information which the Authority considers isn't good enough to demonstrate how it complies with clause 31.2 or confirms that the Worker is not complying with those requirements;
- (d) the Authority may supply any information they receive from the Worker to HMRC for revenue collection and management.

## 32. Publicity

32.1 The Supplier and any subcontractor shall not make any press announcements or publicise this Contract or its contents in any way; without the prior written consent of the Authority.

32.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## 33. Conflict of interest

33.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority.

33.2 The Supplier must promptly notify and provide details to the Authority if a conflict of interest happens or is expected to happen.

33.3 The Authority can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

## 34. Reporting a breach of the contract

34.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Authority any actual or suspected breach of Law or breach of its obligations under the Contract.

34.2 Where an actual or suspected breach is notified to the Authority under clause 34.1, the Supplier will take such action to remedy any breach as the Authority may reasonably require. Where the breach is material, the Authority has the right to terminate under clause 11.4.

34.3 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 34.1.

## 35. Resolving disputes

35.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.

35.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 35.3 to 35.5.

35.3 Unless the Authority refers the dispute to arbitration using clause 35.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the dispute;
- (b) grant interim remedies;
- (c) grant any other provisional or protective relief.

35.4 The Supplier agrees that the Authority has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

35.5 The Authority has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 35.3, unless the Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 35.4.

35.6 The Supplier cannot suspend the performance of the Contract during any dispute.

35.7 The provisions of this clause 35 are without prejudice to the Authority's right to terminate or suspend the Contract under clause 11.

## 36. Which law applies

36.1 This Contract and any issues arising out of, or connected to it, are governed by English law.

36.2 The courts of England and Wales shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with the Contract or its subject matter or formation.