



Centre for Environment  
Fisheries & Aquaculture  
Science



**Cefas**


# Short Form Contract

## Contract for Services

CEFAS24-82 Contract for technical advisory services to support Hinkley Point C Compensation Measures package, specifically Kelp planning.

University of Newcastle upon Tyne  
King's Gate  
Newcastle upon Tyne  
NE1 7RU

Our Ref: CEFAS24-82  
Date: 17.12.2024



Dear Sirs,

**Award of contract for the supply of technical advisory services to support Hinkley Point C Compensation Measures package, specifically Kelp planning (Services)**

Following your tender/proposal for the supply of the Services to **The Secretary of State for Environment, Food and Rural Affairs** acting as part of the Crown through the **Centre for Environment, Fisheries and Aquaculture Science** ("the Customer"), we are pleased to award this contract to you.

This letter (**Award Letter**) and its schedules set out the terms of the contract between the Customer and **Newcastle University (Contractor)** for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract attached to this Award Letter (**Conditions**).

If there is any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Agreement as they will not be accepted by the Customer and may delay the process.

For the purposes of the Agreement, the Customer and the Contractor agree as follows:

The Services shall be performed at the Contractor's premises, alongside occasional on site support if required, to be discussed throughout the duration of the Contract if/when the need arises.

The charges for the Services shall be as set out in Schedule 3.

The specification of the Services to be supplied is as set out in Schedule 4.

The Term shall commence on 17th December 2024 and the Expiry Date shall be 31<sup>st</sup> December 2025 unless subject to early termination.

The address for notices of the Parties are:

| <b>Customer</b>   | <b>Contractor</b>  |
|---|--|
| Cefas<br>Pakefield Road<br>Lowestoft<br>Suffolk<br>NR33 0HT<br><br>[REDACTED]<br><br>[REDACTED] | University of Newcastle upon Tyne<br>King's Gate<br>Newcastle upon Tyne<br>NE1 7RU<br><br>[REDACTED] |

The following persons are Key Personnel for the purposes of the Agreement:

| <b>Name</b> | <b>Title</b> |
|-------------|--------------|
| [REDACTED]  |              |

The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a “**Relevant Conviction**”), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to: [Finance@cefas.gov.uk](mailto:Finance@cefas.gov.uk) or Cefas, Pakefield Road, Lowestoft, Suffolk NR33 0HT. Within [10] working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [Finance@cefas.gov.uk](mailto:Finance@cefas.gov.uk).

## Liaison

[REDACTED]

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to Jade Peek at the above address **within 7** days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

[REDACTED]

[REDACTED]

Pakefield Road,  
Lowestoft,  
Suffolk,  
NR33 0HT, UK

e-mail: [procure@cefas.gov.uk](mailto:procure@cefas.gov.uk)

| Signed for and on behalf of the <b>Supplier</b> | Signed for and on behalf of the <b>Authority</b> |
|---|--|
| Name: [REDACTED]                                | Name: [REDACTED]                                 |
| Date: 17 December 2024                          | Date: 17th December 2024                         |
| Signature: [REDACTED]                           | Signature: [REDACTED]                            |

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# 1. Interpretation

## 1.1 In these terms and conditions:

| Term                       | Description   |
|----------------------------|---|
| “Agreement”                | means the contract between (i) the Customer acting as part of the Crown and (ii) the Contractor constituted by the Contractor’s acceptance of the Award Letter;   |
| “Award Letter”             | means the letter from the Customer to the Contractor printed above these terms and conditions;  |
| “Delta”                    | means the Customer’s electronic contract management system  |
| “Central Government Body”  | 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:<br><br>Government Department;<br><br>Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);<br><br>Non-Ministerial Department; or<br><br>Executive Agency; |
| “Charges”                  | means the charges for the Services as specified in the Award Letter;  |
| “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 marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;  |
| “Contractor”               | means the person named as Contractor in the Award Letter;   |
| “Controller”               | has the meaning given in the GDPR;  |
| “Customer”                 | means the person identified in the letterhead of the Award Letter;  |
| “Data Loss Event”          | means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;  |

|                                     |  |
|-------------------------------------|--|
| “Data Protection Impact Assessment” | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;  |
| “Data Protection Legislation”       | means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;   |
| “Data Protection Officer”           | has the meaning given in the GDPR;   |
| “Data Subject”                      | has the meaning given in the GDPR;   |
| “Data Subject Request”              | means 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;  |
| “DPA 2018”                          | means the Data Protection Act 2018;  |
| “Expiry Date”                       | means the date for expiry of the Agreement as set out in the Award Letter;   |
| “FOIA”                              | means the Freedom of Information Act 2000;   |
| “GDPR”                              | means the General Data Protection Regulation (Regulation (EU) 2016/679);   |
| “Information”                       | has the meaning given under section 84 of the FOIA;  |
| “Joint Controllers”                 | means where two or more Controllers jointly determine the purposes and means of processing.  |
| “Key Personnel”                     | means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Contractor in writing;  |
| “Law”                               | means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the relevant Party is bound to comply; |
| “LED”                               | means Law Enforcement Directive (Directive (EU) 2016/680);   |
| “Party”                             | the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;   |
| “Personal Data”                     | has the meaning given in the GDPR;   |



|                            |  |
|----------------------------|--|
| “Personal Data Breach”     | has the meaning given in the GDPR;   |
| “Processor”                | has the meaning given in the GDPR;   |
| “Protective Measures”      | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| “Purchase Order Number”    | means the Customer’s unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;   |
| “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 Contractor to the Customer under the Agreement;   |
| “Specification”            | means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;   |
| “Staff”                    | means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;   |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time;   |
| “Sub-processor”            | means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement;  |
| “Term”                     | means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with Clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;  |
| “VAT”                      | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and   |
| “Working Day”              | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.  |

- 1.2 In these terms and conditions, unless the context otherwise requires:
- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
  - 1.2.2 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;
  - 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
  - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
  - 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2. Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of the Contractor's notification of acceptance within 7 days of the date of the Award Letter.

## **3. Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Contractor shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.

- 3.3 The Customer may by written notice to the Contractor at any time request a variation to the scope of the Services. In the event that the Contractor agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Contractor.

## **4. Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

## **5. Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.7.1 provisions having the same effects as clauses 5.3 to 5.6 of this Agreement; and

- 5.7.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.7 of this Agreement.
- 5.8 In this clause 5.8, “sub-contract” means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6. Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Contractor or the Staff shall be at the Contractor’s risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer’s premises, remove the Contractor’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer’s premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer’s security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor’s premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7. Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8. Assignment and sub-contracting**

- 8.1 The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

## **9. Intellectual Property Rights**

- 9.1 All intellectual property rights (including copyright) in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.
- 9.2 All intellectual property rights (including copyright) in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Customer and the Contractor hereby assigns to the Customer by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Customer hereby grants the Contractor a perpetual, royalty-free, irrevocable, non-exclusive licence to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services for the purposes of its business operations provided that no data shall be made available publicly without the prior written permission of the Customer.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer 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 Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

## **10. Governance and Records**

- 10.1. The Contractor shall:
- 10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2. The Contractor shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

# 11. Confidentiality, Transparency and Publicity

11.1. Subject to clause 11.2, each Party shall:

11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1. where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2. to its auditors or for the purposes of regulatory requirements;

11.2.3. on a confidential basis, to its professional advisers;

11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and

11.2.6. where the receiving Party is the Customer:

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

b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

11.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.



- 11.4. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12. Freedom of Information**

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13. Protection of Personal Data and Security of Data**

- 13.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 1. The only processing that the Contractor is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.
- 13.2. The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 13.3. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:



- a. a systematic description of the envisaged processing operations and the purpose of the processing;
  - b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - c. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 13.4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a. process that Personal Data only in accordance with Schedule 1 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - b. ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures), having taken account of the:
    - i. nature of the data to be protected;
    - ii. harm that might result from a Data Loss Event;
    - iii. state of technological development; and
    - iv. cost of implementing any measures;
  - c. ensure that :
    - i. the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
    - ii. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
      - 1. are aware of and comply with the Contractor's duties under this clause;
      - 2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - 3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
      - 4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - d. not transfer Personal Data outside of the European Union unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- i. the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Customer;
    - ii. the Data Subject has enforceable rights and effective legal remedies;
    - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
    - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - e. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 13.5. Subject to clause 13.6 the Contractor shall notify the Customer immediately if, in relation to any Personal Data processed in connection with its obligations under this Agreement, it:
- a. receives a Data Subject Request (or purported Data Subject Request);
  - b. receives a request to rectify, block or erase any Personal Data;
  - c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d. receives any communication from the Information Commissioner or any other regulatory authority;
  - e. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f. becomes aware of a Data Loss Event.
- 13.6. The Contractor's obligation to notify under clause 13.5 shall include the provision of further information to the Customer in phases, as details become available.
- 13.7. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Agreement and any complaint, communication or request made under Clause 13.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- a. the Customer with full details and copies of the complaint, communication or request;
  - b. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - c. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Customer following any Data Loss Event;

- e. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 13.8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 13. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- a. the Customer determines that the processing is not occasional;
  - b. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - c. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9. The Contractor shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- 13.10. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 13.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a. notify the Customer in writing of the intended Sub-processor and processing;
  - b. obtain the written consent of the Customer;
  - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
  - d. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 13.12. The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13. The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.14. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 13.15. When handling Customer data (whether or not Personal Data), the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.
- 13.16. This clause 13 shall apply during the Term and indefinitely after its expiry.

- 13.17. Where the Parties include two or more Joint Controllers as identified in Schedule 1, in accordance with GDPR Article 26 those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [X] in replacement of Clauses 13.1 to 13.14 for the Personal Data in respect of which they are Joint Controllers.

## 14. Liability

- 14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

- 14.2 Subject always to clauses 14.3 and 14.4:

- 14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and

- 14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Contractor be liable to the Customer for any:

- a) loss of profits;
- b) loss of business;
- c) loss of revenue;
- d) loss of or damage to goodwill;
- e) loss of savings (whether anticipated or otherwise); and/or
- f) any indirect, special or consequential loss or damage.

- 14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

- 14.3.1 death or personal injury caused by its negligence or that of its Staff;

- 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

- 14.3.3 any other matter which, by law, may not be excluded or limited.

- 14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## 15. Force Majeure

- 15.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing

when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **16. Termination**

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:
- 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
  - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
  - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
  - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction;
  - 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law; or
  - 16.2.8 where a vessel is to be provided as part of the Agreement, and (where applicable) it fails the Vessel Safety Assessment and Inspection Document (VSAID) conducted by the Customer and this, in the reasonable opinion of the Customer, cannot be rectified within a reasonable timescale.
- 16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause

and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Agreement, the Contractor shall:

16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and

16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17. Compliance**

17.1 The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.

17.2 The Contractor shall:

17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and

17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.

17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

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

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

- 18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
- 18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

## **19. Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20. General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not

expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 20.5 The documents forming this Agreement shall take precedence in the order listed below:
- a) The Award Letter
  - b) Schedule 2 – SPECIAL CONDITIONS
  - c) These Conditions
  - d) Schedule 1 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS
  - e) Schedule 3 - PRICING
  - f) Schedule 4 - SPECIFICATION OF REQUIREMENTS
- 20.6 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.7 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.8 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.9 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21. Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.



- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22. Governing Law and Jurisdiction**

- 22.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

# SCHEDULE 1 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

| Data Processing descriptor               | Narrative  |
|--|--|
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 13.1.   |
| Subject matter of the processing         | The processing relates to the provision of engineering and project management services as more particularly described in the Agreement. The Contractor will support the Customer by providing such services.   |
| Duration of the processing               | The processing of Personal Data will continue for as long as is necessary to deliver the Services for which it is provided.  |
| Nature and purposes of the processing    | Processing required to ensure the engineering and project management services as more particularly described in the Agreement are all carried out in accordance with the Agreement.  |
| Type of Personal Data                    | Name, date of birth, address, salary information, details of next of kin, national insurance number, health and medical information, location information, information on entry and exit from the project site and other places of work.   |
| Categories of Data Subject               | Persons engaged by NNB Genco, the Customer, the Contractor, any sub-contractor, any other contractor of NNB Genco, any next of kin of the aforementioned, family including spouse and partner, children, employees, agents and any business contacts, and third party visitors (whether invited or not) to the project site and/or place of manufacture and/or performance of service. |

|  |   |
|--|---|
| <p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p> | <p>On termination or expiry of the relevant permitted processing or this Agreement, the Contractor ceases all use of the Personal Data and, at the Employer's election and either destroys all Personal Data or transfers all Personal Data to the Customer or a nominated third party (in a mutually agreed format and by a mutually agreed method).</p> |
|--|---|

# SCHEDULE 2 - SPECIAL CONDITIONS

This SCHEDULE 2 sets out the Special Conditions associated with this Agreement. In the event of any conflict between any other provision of the Agreement and this SCHEDULE 2, this SCHEDULE 2 shall take precedence, in accordance with the order listed in clause 20.5 of the terms and conditions of contract for services.

- A. NNB Generation Company Limited (herein called "NNB Genco") has awarded a contract (the MAIN CONTRACT) to the Customer to perform work (hereinafter the Project) for NNB Genco; and
- B. The Customer now wishes to utilise the resources of the Contractor to perform the Services as more particularly specified in SCHEDULE 4 herein, all of which Services comprise a vital portion of the work, for the ultimate benefit of NNB Genco.
- C. The Contractor is a specialist Contractor and represents that s/he has the required knowledge, experience and capacity to execute specified works under the physical conditions pertaining to the Services and will perform the same in a professional manner in accordance with this Agreement and with accepted practice in the industry.
- D. The parties have undertaken to work in a spirit of close co-operation for the purpose of executing the Services and for building understanding and relationship for future joint projects.

## 1 Definitions

- 1.1 "NNB Genco" shall mean NNB Generation Company Limited, its subsidiaries and holding companies, and any joint venture into which it may enter in connection with the Project.
- 1.2 "The Customer' Representative" shall be the person or persons so nominated in the Contract or notified to the Contractor from time to time by the Customer.
- 1.3 "Proprietary Information" shall mean the Results and any and all information, which is disclosed, to the Contractor by the Customer or by NNB Genco and their assignees/successors.
- 1.4 "Results" shall mean all information, reports, specifications, software, models, prototypes, drawings and any other information or materials in any form created by the Contractor in or pursuant to the performance of the Services.
- 1.5 "Intellectual Property Right" means any and all intellectual property rights anywhere in the world (including domain names, patents, design rights, copyrights including rights in computer software and databases (including database rights) rights in source code, topography rights, trade marks, trade names, logos, trade secrets and know-how and any applications or the right to make applications for any of the above) existing now or at any time in the future and whether registered or registerable or not.

## 2 Contractor's Obligations

- 2.1 The Contractor shall complete the Services by the date and in accordance with any programme specified in the Agreement. The Contractor shall perform the Services and its duties and obligations under the Agreement with all due expedition, speed and diligence and shall constantly use its best endeavours to prevent delay in the progress and completion of the Services or any part thereof.
- 2.2 The Contractor will keep the Customer informed of progress in the provision of the Services. The Contractor will immediately inform the Customer if it has reason to suspect that it may prove impossible or impracticable to complete the Services within the period and/or at the cost required by the Customer. This clause shall not be construed as a limitation of the liability of the Contractor under the Agreement.
- 2.3 The Contractor shall (subject to the terms of this Agreement) comply with requests made by the Customer concerning the Contract. All such requests shall be in writing and shall be issued by the Customer' Representative. If the Contractor considers that any such request under this Contract (including but not limited to any instruction under Clause 2.4) would require an increase in the Charges then prior to complying with the instruction (save in the case of emergency instructions which require immediate action) the Contractor will so notify the Customer and within 2 Working Days of the request, the Contractor will provide to the Customer an estimate of the increase in the Charges. Following

notification by the Contractor the Customer may either withdraw the request or require the Contractor to comply with it (in which case the Contractor shall be entitled to the resultant increase in the Charges) either before or after attempting to agree the amount of the increase. No additional payment will become due and payable in respect of varied or additional Services if the Contractor has not complied with the requirements of this clause.

- 2.4 The Customer may (but without vitiating or invalidating the Contract) at any time issue a written request to the Contractor to vary the Services whether to increase, omit or otherwise alter the Services. The rates as specified in the Agreement shall be the basis of any additional, varied or omitted Services, such additional sum or deduction to be agreed by the parties in writing from time to time save that where any such variation has been necessitated by some default or breach by the Contractor or by some other cause for which it is responsible, any additional cost attributable to the variation shall be borne by the Contractor.

### **3 Communications**

- 3.1 The Contractor's point of contact with the Customer shall be the Customer's Representative. If the Contractor is in communication or correspondence with other personnel of the Customer the Contractor shall supply to the Customer's Representative copies of such correspondence.
- 3.2 The Contractor shall not communicate with third parties or other Contractors of the Customer in relation to the Services without the consent of the Customer's Representative.

### **4 The Charges**

- 4.1 Except where the Charges are a fixed price: -
- 4.2 The Contractor will provide an estimate of costs and notification of rates before commencing the Services.
- 4.3 Any rates charged shall be broken down to advise the cost of overheads and support staff.
- 4.4 In addition to the Charges, the Customer shall reimburse all reasonable expenses and disbursements properly incurred by the Contractor in performing the Services except that: -
- a) Accommodation and travel will only be paid by prior agreement with the Customer.
  - b) Expenses and disbursements must be receipted and will be reimbursed at cost.
- 4.5 Without prejudice to any other obligations in the Contract, if at any time the Contractor believes that the Charges or the estimate of costs provided will be exceeded by five per cent (5%) or more he shall notify the Customer's Representative as soon as reasonably practicable giving a detailed breakdown of the increase and the reason behind it.

### **5 Payment**

- 5.1 Payment by the Customer shall be without prejudice to any claims or rights which the Customer may have against the Contractor and shall not constitute any admission by the Customer as to the performance by the Contractor of his obligations hereunder. Prior to making any such payment, the Customer shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Contractor.

### **6 Ownership of Documents and Design**

- 6.1 The Results shall be the property of the Customer and shall be delivered on request to the Customer by the Contractor.
- 6.2 Title to all Intellectual Property Rights in the Results shall vest in the Customer and the Contractor hereby assigns all and whole its present and future right, title and interest in and to each such Intellectual Property Right free from all liens, charges and encumbrances.

- 6.3 The Contractor will fully indemnify the Customer on demand against all actions, claims, demands, liabilities, losses, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights in relation to the Results.

## **7 Confidentiality**

- 7.1 Except to the extent required by law or any regulatory body the Contractor shall not disclose to any third party the existence of the Contract or the Charges or any other terms or conditions of the Agreement.
- 7.2 Except to the extent required by law or any regulatory body the Contractor shall keep confidential and shall not at any time, for any reason whatsoever, disclose or permit to be disclosed to any third party, the Results.
- 7.3 The Contractor agrees to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or persons or otherwise make use of or permit the making use of any information relating to the Customer' or NNB Genco's technology, technical processes, business affairs or finances. The Proprietary Information shall be used only in connection with and for the purposes of the Contract and for no other purpose.
- 7.4 Proprietary Information shall be disclosed only to those directors, partners, staff and/or sub-contractors of the Contractor who have a reasonable need to see and use it to fulfil the Agreement. The Contractor shall procure that those persons having access to Proprietary Information shall be subject to obligations of confidentiality and shall take all reasonable steps to ensure that directors, partners, staff and/or sub-contractors are made aware of and comply with such obligations of confidentiality and the provisions of this clause 7.
- 7.5 The provisions of this clause shall continue in force after termination of the Agreement for whatever reason.

## **8 Conflict of Interest**

- 8.1 The Contractor confirms that there is no conflict of interest between NNB Genco or the Customer and any other client of the Contractor or sub-contractor, which has not been disclosed to the Customer in writing prior to signature of this Agreement.
- 8.2 Subject to clause 8.1 the Contractor shall ensure that no director, partner, member of staff or sub-contractor is engaged on providing the Services if that engagement would constitute a conflict of the interests of NNB Genco or the Customer. The Contractor shall carry out conflict of interest checks on an on going basis.
- 8.3 No director, partner, staff or sub-contractor of the Contractor shall be granted access to Proprietary Information if the Customer has advised the Contractor that such director, partner, staff or sub-contractor should be excluded from access to Proprietary Information.

## **9 Liability and Indemnity**

- 9.1 The Customer will be relying upon the Contractor's skill, expertise and experience in providing the Services and also upon the accuracy of all representations or statements made. The Contractor hereby agrees to indemnify and keep indemnified the Customer in respect of all damages or injury to any person or to any property and against all actions, suits, claims, demands, costs, losses, damages and expenses suffered or incurred by the Customer to the extent that the same has been caused by: -
- a) any default or breach of contract by the Contractor; and /or
  - b) any negligence of the Contractor; and/or
  - c) any defective design (other than design furnished by NNB Genco or the Customer for which the Contractor has disclaimed responsibility); and/or
  - d) an infringement of a third party's intellectual property rights, by the Contractor, provided always that :
    - i) the Customer shall forthwith give notice to the Contractor of any claims or proceedings following receipt of them;

- ii) the Customer shall make no admission of liability and will give the Contractor sole authority to defend or settle the claims or proceedings at the Contractor's cost and expense.

## **10 Limit of Liability**

- 10.1 In respect of claims other than for personal injury or death and/or any claim against the Contractor resulting from a claim by any third party for loss or damage to property or injury to any person for which the Customer would otherwise be liable and/or breach of any Intellectual Property Right, the limit of the Contractor's liability shall be three-hundred thousand pounds (£300,000).
- 10.2 If required by the Customer, the Contractor shall provide a direct warranty to any third party specified by the Customer in a form acceptable to the Customer to confirm that the Services and Results shall be and/or have been provided in accordance with and to meet the requirements of the Agreement.

## **11 Insurance**

- 11.1 The Contractor (but without limiting his obligations and responsibilities under clause 10) shall insure against damage, loss or injury for which he may be responsible or for which he may be liable to indemnify the Customer under clause 10.
- 11.2 The Contractor shall take out and maintain Professional Indemnity insurance to a level of at least one million pounds and shall use his best endeavours to maintain such insurance for a period of six years after completion of the Services.
- 11.3 The Contractor shall whenever required produce satisfactory evidence to the Customer that the policies required by clauses 11.1 and 11.2 are in force.

## **12 Work on Site/ Safety/ Security**

- 12.1 The Contractor whilst on NNB Genco's premises shall conform in all respects with statutory requirements in force relating to safety, NNB Genco's safety rules, permits to work and in particular such matters as concern the safety, health and welfare of persons working on the said premises. NNB Genco's safety rules are available for inspection upon request. The Contractor shall ensure that all the Contractor's Staff comply with the provisions of this clause.
- 12.2 The Contractor whilst on the Customer' premises shall conform in all respects with statutory requirements in force relating to safety, the Customer' safety rules, permits to work and in particular such matters as concern the safety, health and welfare of persons working on the said premises. the Customer' safety rules are available for inspection upon request. The Contractor shall ensure that all the Contractor's Staff comply with the provisions of this clause.
- 12.3 Whilst working on NNB Genco premises, it will be the responsibility of the Contractor to be aware of and comply with the requirements of the NNB Genco Company Standard on Alcohol and Drug Use in the workplace, a copy of which will be available at site for inspection.
- 12.4 The Contractor shall comply with NNB Genco's security procedures as the same may be amended by NNB Genco from time to time ("Security Procedures"). NNB Genco may amend its Security Procedures to take account of the advice, or any instruction of, any Governmental or other agency or in such manner as it shall in its absolute discretion decide. Copies of the Security Procedures are available from the Company Security Officer or from the Station's Security Officer.
- 12.5 The Contractor shall not present or engage any individual for work at a NNB Genco location unless the appropriate clearance to the satisfaction of NNB Genco and as may be required by the Security Procedures has been obtained and has been provided to either the;
  - (a) Security Officer at the relevant NNB Genco nuclear power station, or
  - (b) Facilities Manager at Barnwood for all other NNB Genco locations.
- 12.6 A copy of all records of security checking and vetting clearances for Contractor's personnel (whether employees or otherwise) working at NNB Genco locations shall be held by NNB Genco and shall be available for inspection/audit by the Office for Civil Nuclear Security (or any relevant successor body).



- 12.7 Compliance with this clause shall not entitle the Contractor to an extension of time for completion or to the recovery of additional costs. The Contractor shall be responsible for the compliance with this clause of his employees, agents and sub-contractors.
- 12.8 The Contractor shall, and shall ensure that its employees, agents and subcontractors comply with the provisions of the Anti-terrorism, Crime and Security Act 2001.

## 13 Termination

- 13.1 Upon a breach of contract by the Contractor which in the case of a breach capable of remedy is not remedied by the Contractor within the time specified by the Customer, the Customer shall have the right to terminate the Contract or any part of the Services under the Contract forthwith by notice in writing to the Contractor and to engage another Contractor to complete the provision of the Services.
- 13.2 In addition to the rights of termination pursuant to clause 13.1 the Customer can terminate the Contract forthwith by notice in writing if the Contractor becomes unable to pay his debts under the Insolvency Act 1986 or any statutory modification or re-enactment thereof, or, in the case of an individual, if a petition for a bankruptcy order is presented or an application for an interim order appointing a Nominee is issued or a deed of arrangement executed or a composition, moratorium or arrangement is proposed to his creditors or in other cases if a petition is issued for winding up or an administration order or a receiver or manager is appointed by the Court or by the holder of a fixed or floating charge or a resolution is passed for voluntary winding-up or either party proposes a composition, moratorium or arrangement is proposed to its creditors or if any act is done or event occurs with respect to the Contractor or its assets which, under any law applicable to the Contractor, has a substantial effect to any of the foregoing acts or events.
- 13.3 Without prejudice to any other right or remedy the Customer may at any time give the Contractor one month's notice terminating the Contract.
- 13.4 Upon the receipt of a notice of termination the Contractor shall cease all further work on the Services other than work that the Customer' Representative may instruct for the purpose of concluding the Services.
- 13.5 The Contractor shall immediately upon receipt of the notice arrange delivery to a site so designated by the Customer' Representative of any Results created by the Contractor in or pursuant to the performance of the Services.
- 13.6 Within ninety days of the issue of the notice the Contractor shall submit a final invoice which will include:
- a) the aggregate amount properly due to the Contractor under the Contract for Services executed prior to receipt of the notice (less any amounts previously paid by the Customer);
  - b) where the Customer has terminated under clause 13.3, the aggregate amount due to the Contractor in respect of any irrevocable commitments that the Contractor has undertaken in pursuance of the Contract; and
  - c) where the Customer has terminated under clause 13.3 the aggregate amount due to the Contractor in respect of any costs, damages, cancellation charges, which have been properly incurred by the Contractor directly on account of termination of the Contract which the Contractor has not otherwise been reimbursed.
- 13.7 For the avoidance of doubt the Customer will have no liability to the Contractor in respect of loss of profit, loss of contracts, lost opportunities or any consequential or indirect loss arising from termination of the Contract.

## 14 Language and Notices

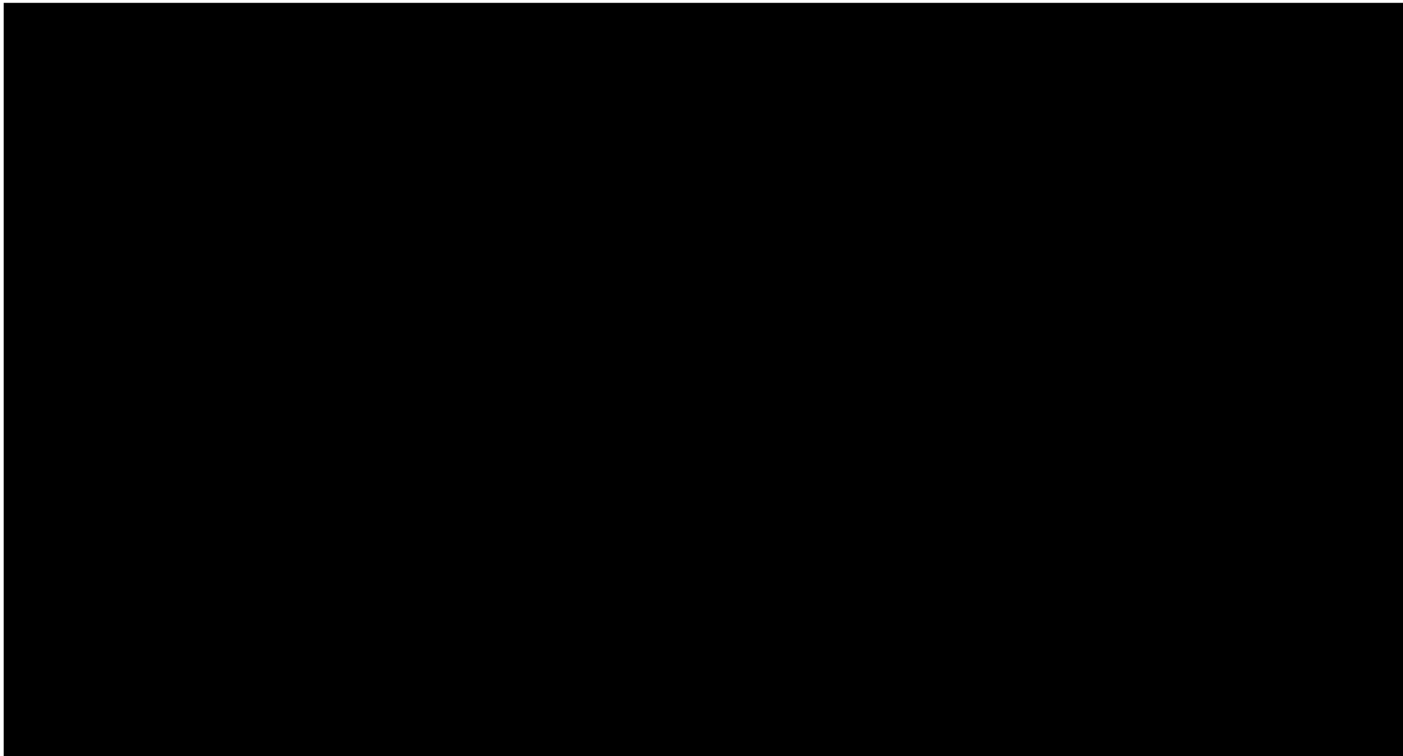
- 14.1 The Law of this Contract shall be English and the Courts of England and Wales shall have exclusive jurisdiction if any matter arising out of this Contract shall be referred to a Court.
- 14.2 Any notice shall be served by leaving it at, or by sending it by first class post or e-mail to the address of the party specified in the Award Letter. Where notice is sent by post it shall be deemed to be received two Working Days next following. Notice sent by e-mail shall be deemed to be received at the time of transmission unless outside the normal business hours of the recipient in which case receipt shall be



deemed to be 10.00 am on the business day next following. Any Notice sent by e-mail shall also be sent by first class post.

- 14.3 The language of the Contract is English and the Results and any documents, correspondence and any other information shall be provided in English unless otherwise specified by the Customer in writing.

## **SCHEDULE 3 – PRICING**



# SCHEDULE 4 - SPECIFICATION OF REQUIREMENTS

## **Technical Specification (Schedule 1)**

The BEEMS (British Energy Estuarine and Marine Studies) programme is funded by NNB GenCo (Hinkley Point C). Through this programme, Cefas provide authoritative scientific information on the marine and transitional waters in the vicinity of potential new build nuclear power stations and require the supplier to deliver the element described below.

### **Requirement:**

Cefas require the supplier to provide technical advice under the Hinkley Point C Compensation Measures project.

Key areas for technical advice will be as follows:

- To provide information on where existing or historic kelp habitats, species or suitable conditions occur and, based on this, provide some recommendations of potential zones where habitats and species could establish or re-establish.
  - Consider potential siting within these zones for each habitat or species based on any known pressures, pros and cons for habitat connectivity, such as fewer larger sites or more smaller sites, and begin to consider the logistics of sourcing those species and habitats.
- Identify potential areas using habitat preference criteria to help identify the location of sites.
- Provide expert advice on restoration methods.
- Provide literature and conduct literature reviews.
- Contribution to technical outputs. This could be in the form of contribution to reports, checking reports prior to submission or quality assurance of data obtained by Cefas or third-party subcontractors.

Alongside desk-based requirements, there is potential to require the supplier to join ground truthing or drone surveys at potential restoration zones. If attendance is not possible, remote support may be necessary. The supplier's expertise may be necessary from the planning and execution phases. Any fieldwork related Health and Safety will be governed by existing Risk Assessments and Method Statements which have been agreed with NNB GenCo.

Attendance, where practical, at the Kelp Habitat Working Group remote meetings with Cefas, NNB GenCo (HPC) and other project stakeholders.

It is anticipated that the vast majority of work under this contract will be remote, however some travel may be necessary. Where possible, Cefas will book and pre-pay travel and accommodation as required. Any further reasonable travel and subsistence expenses will be reimbursed against valid receipts or other acceptable evidence of expenditure. The supplier will liaise with Eva Maher of Cefas on all matters relating to travel, accommodation and other expenses.

### **Deliverables:**

There are no pre-defined deliverables within this contract. The contract will be based upon ad hoc requirements as and when they occur. Cefas will provide as much notice as possible should a requirement occur in which the supplier's expertise are needed.

**TENDER SUBMISSION**

