



Department  
for Environment  
Food & Rural Affairs

NATURAL  
ENGLAND

Dear [REDACTED]

**Award of Contract for Provision of a Maerl Beds and Subtidal Sediments Survey of the Purbeck Coast MCV (Contract reference: ECM\_62910) on behalf of Natural England**

Following your tender proposal of 29<sup>th</sup> September 2021 [REDACTED] for the supply of the above services to Natural England, we are pleased to award this contract to you.

This Award letter and its Annexes set out the terms of the contract between Natural England (as the Authority) and Ocean Ecology Ltd (as the Supplier) for the provision of the above Services. Unless the context otherwise requires, capitalised expressions used in this letter have the same meanings as in the terms and conditions of contract set out in Annex 1 (the "**Conditions**"). In the event of any conflict between this Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Letter as they will not be accepted by the Authority and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Authority and the Supplier agree as follows:

1. The Services shall be performed at the Purbeck coast MCV, with analytical services carried out at the Supplier's premises.
2. The specification of the Services to be supplied is as set out in Schedule 1 to the contract document attached herein [REDACTED].
3. The charges for the Services shall be as set out in Schedule 2 to the contract document attached herein.
4. The Term shall commence on 11<sup>th</sup> November 2021 and the Expiry Date shall be 29<sup>th</sup> April 2022.
5. For notices, the addresses of the Parties are:

Authority	Supplier
<div></div> Wessex Seas Team Natural England Ground Floor, Sterling House Dix's Field, Exeter Devon EX1 1QA <div></div>	<div></div> Ocean Ecology Ltd Goodridge Court Goodridge Avenue Gloucester Gloucestershire GL2 5EN <div></div>

<div></div>	<div></div>
<div></div>	<div></div>

### Payment

Our preference is for all invoices to be sent electronically, quoting a valid purchase order number (PO Number), to [apinvoices-neg-u@gov.sscl.com](mailto:apinvoices-neg-u@gov.sscl.com) or you may send your invoice via post to SSCL, Natural England, PO Box 793, Newport, NP10 8FZ. 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), the details (name and telephone number) of your point of contact (e.g. Contract Manager). Non-compliant invoices will be returned, 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: [apinvoices-neg-u@gov.sscl.com](mailto:apinvoices-neg-u@gov.sscl.com) or by telephone (0845 603 7262) between 09:00-17:00 Monday to Friday.

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in the smooth and successful delivery of the Services. The Authority would be grateful if you could arrange for the contract to be executed, by way of electronic signature on behalf of Ocean Ecology Ltd, within 7 days of receipt of this letter.

Yours faithfully,

Defra Group Commercial

# Conditions of Contract

## Services

**Contract Reference 33660**

**Date: November 2021**

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THIS CONTRACT is dated 11 November 2021

BETWEEN

Natural England of Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX  
(the “Authority”); and

Ocean Ecology Limited, registered in England and Wales under number 08961638,  
whose registered office is Goodridge Court, Goodridge Avenue, Gloucester,  
Gloucestershire, GL2 5EN (the “Supplier”)

(Each is a “Party” and together the “Parties”).

## **1. Definitions and Interpretation**

**1.1** In the Contract, unless the context requires otherwise, the following terms shall have the meanings given to them below:

‘Approval’: the prior written consent of the Authority.

‘Authority Website’: [www.naturalengland.org.uk](http://www.naturalengland.org.uk)

‘Contract Term’: the period from the Commencement Date to the Expiry Date.

‘Contracting Authority’: an organisation defined as a contracting authority in Regulation 2 of the Public Contracts Regulations 2015.

‘Controller’: has the meaning given in the GDPR.

‘Default’: a breach by the Supplier or Staff of its obligations under the Contract or any other default, negligence or negligent statement in connection with the Contract.

‘Dispute Resolution Procedure’: the dispute resolution procedure set out in Clause 20.

‘Force Majeure’: any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, its Staff or any other failure in the Supplier’s supply chain.

‘Fraud’: any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Authority or any other Contracting Authority.

‘Good Industry Practice’: standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under similar circumstances.

‘Goods’: all products, documents, and materials developed by the Supplier or its agents, Sub-contractors, consultants, suppliers and Staff in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

‘Intellectual Property Rights’: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites.

‘IP Materials’: all Intellectual Property Rights which are:

- a) furnished to or made available to the Supplier by or on behalf of the Authority; or
- b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

[‘Joint Controllers’: where two or more Controllers jointly determine the purposes and means of processing.]

‘Law’: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, byelaw, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the relevant Party is bound to comply.

‘LED’: Law Enforcement Directive (Directive (EU) 2016/680).

‘Price’: the price for the Services set out in Schedule 2.

‘Replacement Supplier’: any third-party supplier of services appointed by the Authority to replace the Supplier.

‘Staff’: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-contractors who are engaged in providing the Services from time to time.

‘Sub-contract’: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

‘Sub-contractor’: third parties which enter into a Sub-contract with the Supplier.

‘Sub-processor’: any third party appointed to process Personal Data on behalf of the Supplier related to this Contract.

‘Valid Invoice’: an invoice containing the information set out in Clause 3.3.

‘VAT’: Value Added Tax.

‘Working Day’: Monday to Friday excluding any public holidays in England and Wales.

**1.2** The interpretation and construction of the Contract is subject to the following provisions:

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;
- f) references to the Services include references to the Goods;
- g) references to Clauses and Schedules are to clauses and schedules of the Contract; and
- h) the Schedules form part of the Contract and have affect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

## **2. Contract and Contract Term**

**2.1** The Supplier shall provide the Authority with the services set out in Schedule 1 (the “Services”) and its Appendices, in accordance with the terms and conditions of the Contract.

**2.2** The Contract is effective on 11 November 2021 (the “Commencement Date”) and ends on 29 April 2022 (the “Expiry Date”) unless terminated early.



### **3. Price and Payment**

**3.1** In consideration of the Supplier providing the Services in accordance with the Contract, the Authority shall pay to the Supplier the Prices shown at Schedule 2 and in accordance with the Milestones also described at Schedule 2.

**3.2** The Authority shall:

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

**3.3** The Supplier shall submit an invoice to the Authority for payment against each completed Milestone, as set out in the table below. Upon satisfactory completion of all deliverables under each Milestone, an invoice shall be submitted to the following address: Accounts-Payable.neg@sscl.gse.gov.uk or SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ.

**3.4** The Supplier shall be responsible for ensuring that Milestones 1-3 shall be completed, and associated invoices submitted to the Authority, no later than 28 March 2022. The Supplier shall also ensure that Milestone 4 shall be completed, and an associated invoice submitted to the Authority, no later than 28 April 2022.

**3.5** Each valid invoice shall:

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

**3.6** The Supplier acknowledges that:

- a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Authority will not be liable to pay the Supplier any additional VAT;
- b) an invoice which does not include the information set out in Clause 3.5 will be rejected.

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

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

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

#### **4. Warranties and Representations**

**4.1** The Supplier warrants and represents for the Contract Term that:

- a) it has full capacity and authority and has, or is in process of seeking, all necessary consents and regulatory approvals to provide the Services following contract award;
- b) the Contract is executed by a duly authorised representative of the Supplier;
- c) in entering the Contract, it has not committed any Fraud;
- d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;
- e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
- g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;
- h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
- i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- j) it will comply with its obligations under the Immigration, Asylum and Nationality Act 2006.

**4.2** The Supplier warrants and represents that in the 3 years prior to the date of the Contract:

- a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;
- b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and
- c) it has complied with all relevant tax laws and regulations and no tax return submitted to a relevant tax authority has been found to be incorrect under any anti-abuse rules.

## **5. Service Standards**

**5.1** The Supplier shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.

**5.2** If the Services do not meet the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as may be specified by the Authority.

**5.3** The Authority may, by written notice to the Supplier, reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods. If the Authority rejects any of the Goods, it may (without prejudice to its other rights and remedies) either:

- a) have the Goods promptly either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until the repair or replacement has occurred;

or

- b) treat the Contract as discharged by the Supplier's breach and obtain a refund (if the Goods have already been paid for) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining replacements.

**5.4** The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 5.3.

**5.5** If the Authority issues a receipt note for delivery of the Goods it shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.

**5.6** The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for 3 years from the date of acceptance. If the Authority shall within such guarantee period or within 30 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall choose) free of charge.

**5.7** Any Goods rejected or returned by the Authority pursuant to this Clause 5 shall be returned to the Supplier at the Supplier's risk and expense.

## **6. Termination**

**6.1** The Authority may terminate the Contract at any time by giving 30 days written notice to the Supplier.

**6.2** The Authority may terminate the Contract in whole or in part by notice to the Supplier with immediate effect and without compensation to the Supplier if:

- a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
- b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;
- c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;
- d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;
- e) subject to Clause 6.3, the Supplier commits a Default;
- f) there is a change of control of the Supplier; or
- g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Authority).

**6.3** If the Supplier commits a Default which is capable of being remedied, the Authority may terminate the Contract pursuant to Clause 6.2(e) only if the Supplier has failed to remedy the Default within 20 Working Days of being notified of the Default by the Authority.

## **7. Consequences of Expiry or Termination**

**7.1** If the Authority terminates the Contract under Clause 6.2:

- a) and then makes other arrangements for the supply of the Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term; and
- b) no further payments shall be payable by the Authority to the Supplier (for the Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under Clause 7.1(a).

**7.2** On expiry or termination of the Contract the Supplier shall:

- a) co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier; and
- b) procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services) shall be delivered promptly to the Authority.

**7.3** Save as otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 3, 7 to 12, 16, 25 and 27.

## **8. Liability, Indemnity and Insurance**

**8.1** Notwithstanding any other provision in the Contract, neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence;
- b) Fraud or fraudulent misrepresentation; or

c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.

**8.2** The Supplier shall indemnify and keep indemnified the Authority against all claims, proceedings, demands, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise in tort (including negligence) default or breach of the Contract to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or Fraud of itself or of Staff or Sub-contractors save to the extent that the same is directly caused by the negligence, breach of the Contract or applicable law by the Authority.

**8.3** The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

**8.4** Subject to Clause 8.1:

a) neither Party is liable to the other for any:

(i) loss of profits, business, revenue or goodwill;

(ii) loss of savings (whether anticipated or otherwise); and/or

(iii) indirect or consequential loss or damage

b) each Party's total aggregate liability in respect of all claims, losses damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall not exceed £150,000 (one hundred and fifty thousand pounds).

**8.5** The Supplier shall, with effect from the Commencement Date and for such period as necessary to enable the Supplier to comply with its obligations under the Contract, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Term and for a minimum of 6 years following the end of the Contract.

**8.6** The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

**8.7** If the Supplier fails to comply with Clauses 8.5 and 8.6 the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

**8.8** The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

**8.9** The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **9. Confidentiality**

**9.1.** Subject to Clause 9.2, unless agreed otherwise in writing, the Supplier shall, and shall procure that Staff shall, keep confidential all matters relating to the Contract.

**9.2.** Clause 9.1 shall not apply to any disclosure of information:

- a) required by any applicable law;
- b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;
- c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 9.1; or
- d) which is already lawfully in the Supplier's possession prior to its disclosure by the Authority.

## **10. Freedom of Information**

**10.1.** The Supplier acknowledges that the Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the "Information Acts") and may be required to disclose certain information to third parties including information relating to this Contract pursuant to the Information Acts.

**10.2.** If the Authority receives a request for information relating to the Contract pursuant to either of the Information Acts, the Authority may disclose such information as necessary in order to comply with its duties under the Information Acts.

## **11. Intellectual Property (IP) Rights**

**11.1** The IP Materials shall vest in the Authority and the Supplier shall not, and shall procure that Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for the Supplier to provide the Services.

**11.2** The Supplier shall indemnify and keep indemnified the Authority and the Crown against all actions, claims, demands, losses, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur arising from any infringement or alleged infringement of any Intellectual Property Rights by the availability of the Services except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

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

**12.1.** The Supplier shall act within the provisions of the Bribery Act 2010.

**12.2.** The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of money from the Authority.

**12.3.** The Supplier shall notify the Authority immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

## **13. Discrimination**

**13.1** The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

**13.2** The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

## **14. Environmental and Ethical Policies**

**14.1** The Supplier shall provide the Services in accordance with the Authority's policies on the environment, sustainable and ethical procurement and timber and wood derived products, details of which are available on the Authority Website.

## **15. Health and Safety**

**15.1** Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.

**15.2** While on the Authority's premises, the Supplier shall comply with the Authority's health and safety policies.

**15.3** The Supplier shall notify the Authority immediately if any incident occurs in providing the Services on the Authority's premises which causes or may cause personal injury.



**15.4** The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974, and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's premises when providing the Services.

**15.5** The Supplier's health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) shall be made available to the Authority on request.

## **16. Monitoring and Audit**

**16.1** The Authority may monitor the provision of the Services and the Supplier shall co-operate and shall procure that Staff and any Sub-contractors co-operate, with the Authority in carrying out the monitoring at no additional charge to the Authority.

**16.2** The Supplier shall keep and maintain until 6 years after the end of the Contract Term full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall allow the Authority, the National Audit Office and the Comptroller and Auditor General reasonable access to those records and on such terms as they may request.

**16.3** The Supplier agrees to provide, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

## **17. Transfer and Sub-Contracting**

**17.1** The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval.

**17.2** If the Supplier enters into any Sub-contract in connection with the Contract it shall:

- a) remain responsible to the Authority for the performance of its obligations under the Contract;
- b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;
- c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;
- d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.

**17.3** The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- a) any Contracting Authority or any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- b) any private sector body which performs substantially any of the functions of the Authority.

**17.4** Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.

## **18. Dispute Resolution**

**18.1** The Parties shall attempt in good faith to resolve any dispute between them arising out of the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall include the escalation of the dispute to the Supplier's representative and the Authority's commercial director or equivalent.

**18.2** Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

**18.3** If the dispute cannot be resolved by the Parties pursuant to Clause 19.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clauses 19.5 to 19.10.

**18.4** The obligations of the Parties under the Contract shall not cease, or be suspended, or delayed by the reference of a dispute to mediation, and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.

**18.5** A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree a Mediator within 10 Working Days after a request by one Party or if the chosen Mediator is unable to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

**18.6** The Parties shall, within 10 Working Days of the appointment of the Mediator, meet the Mediator to agree a programme for the disclosure of information and the structure to be adopted for negotiations. The Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

**18.7** Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

**18.8** If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

**18.9** Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

**18.10** If the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to the Courts.

**18.11** Subject to Clause 19.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 19.1 and 19.5 to 19.10 have been completed.

## **19. Supplier's Status**

**19.1** Nothing in the Contract shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent for the other for any purposes except as specified by the terms of the Contract.

**19.2** The Supplier shall not (and shall ensure that Staff shall not) say or do anything that might lead any person to believe that the Supplier is acting as the agent, partner or employee of the Authority.

## **20. Notices**

**20.1** Notices shall be in writing and in English and shall be deemed given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice and if left at, or sent by first class mail to, the address of the receiving Party as specified in the Contract (or as amended from time to time by notice in writing to the other Party).

## **21. Entire Agreement**

**21.1** The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, arrangements and undertakings.

## **22. Third Party Rights**

**22.1** No term of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a Party other than the Crown.

## **23. Waiver**

**23.1** The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

**23.2** No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

**23.3** A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **24. Publicity**

**24.1** The Supplier shall not without Approval:

- a) make any press announcements or publicise the Contract or its contents in any way; or
- b) use the Authority's name or logo in any promotion or marketing or announcement.

**24.2** The Authority may publish the Contract on the Authority Website or another website at its discretion.

## **25. Force Majeure**

**25.1** Except to the extent that the Supplier has not complied with any business continuity plan agreed with the Authority, neither Party shall be liable for any failure to perform its obligations under the Contract if, and to the extent, that the failure is caused by act of God, war, riots, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding any industrial dispute relating to the Supplier, Staff or Sub-contractors.

**25.2** If there is an event of Force Majeure, the affected Party shall use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

## **26. Governing Law and Jurisdiction**

**26.1** The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales.

**26.2** The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **27. Electronic Signature**

**27.1** Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000.

**27.2** The Contract is formed on the date on which the Supplier communicates acceptance on the Authority's electronic contract management system.

**27.3** No other form of acknowledgement will be accepted.



## **SCHEDULE 1 - SPECIFICATION OF SERVICES**

1. The Authority's general requirement is for a benthic survey of the Purbeck Coast Marine Conservation Zone (MCZ) in Dorset. The survey shall be carried out using an inshore vessel, and data shall be collected using drop-down/towed video, still photographs and grab samples. Rigorous analysis of gathered data shall then be conducted. A map of the MCZ site and its features are available on the .gov website using the following link:

Marine Conservation Zones: Purbeck Coast - GOV.UK ([www.gov.uk](http://www.gov.uk)). The site boundary and location of the features can also be viewed on Magic.

2. The Supplier shall undertake the services in accordance with their technical responses to the RFQ, and specifically their responses to technical questions E01 and E03 (Appendix 1), and their responses to the Authority's clarification requests (Appendix 2).

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## SCHEDULE 2 – PRICES and MILESTONES

### Prices

SERVICE ITEM	SERVICE	Qty (denomination is in Days unless stated)	UNIT PRICE £ (ex. VAT)	TOTAL PRICE £ (ex. VAT)
1	Project set up/design and review, including production of Terms of Reference and Quality Plan	3.5	■	■
2	Pre survey planning and design, including production and review of RAMS.	4	■	■
3	Initial project meeting (to be held by phone, MS Teams, as appropriate)	1	■	■
4	Equipment requirements, including DDC, Grab and consumables.	6	■	■
5a	All Field work – DDV and still images. Includes for vessel, fuel/lubes and crew/scientific personnel.	5	■	■
5b	All Field work – grab samples	3	■	■
6a	Infaunal Sample Analysis over 1.0mm sieve mesh	40 samples	■	■
6b	Infaunal Sample Analysis over 0.5mm sieve mesh.	40 samples	■	■
7	Particle Size Analysis over 1.0mm sieve mesh	40 samples	■	■
8	Data analysis and mapping	5	■	■
9	GIS data to electronic format	3	■	■
10	Travel and subsistence	1	■	■
11	Customer support / contract management	1	■	■
12	In the event of downtime for vessel, equipment and personnel, due to poor weather conditions, Supplier shall be entitled to specific payment.	4 (maximum)	■	■
13	Mobilisation / demobilisation	2	■	■
Total				62,925.00

## **Milestones**

<b>Milestone</b>	<b>Description</b>	<b>Service Items (as shown in above Price table)</b>	<b>Amount (£)</b>
1	Upon confirmation of mobilisation	Items 1-3, 11 and 50% of Item 13.	
2	Upon completion of demobilisation and submission of a field report (containing what was achieved, what data were collected, and when/where), all raw imagery data, and stills of the sediment / maerl grab samples to illustrate what was collected.	Items 4-5b, 10, 12 and 50% of Item 13.	
3	Upon completion of laboratory analysis and submission of a MEDIN compliant excel spreadsheet detailing full infaunal analysis results, and results of the particle size analysis.	Items 6a, 7	
4	Upon submission of the final report (including any amendments following review of a draft copy by NE) and GIS shapefiles.	Items 8, 9	

## SCHEDULE 3 – TRAVEL and SUBSISTENCE

### Travel and Subsistence

All Travel and Subsistence should be in line with Defra's Travel and Subsistence Policy. Claims should always be supported by valid receipts for audit purposes and must not exceed any of the stated rates below. Should the stated rate be exceeded, Defra reserve the right to reimburse only up to the stated rate.

### Rail Travel

**All Journeys** – Standard class rail unless a clear business case demonstrating value for money can be presented. This includes international rail journeys by Eurostar and other international and overseas rail operators.

### Mileage Allowance

Mileage Allowance	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
Private cars and vans – no public transport rate*	45p	25p
Private cars and vans – public transport rate	25p	25p
Private motorcycles	24p	24p
Passenger supplement	5p	5p
Equipment supplement**	3p	3p
Bicycle	20p	20p

\*NB the 'no public transport rate' for car and van travel can only be claimed where the use of a private vehicle for the journey is essential e.g. on grounds of disability or where there is no practical public transport alternative. If the use of the vehicle is not essential the 'public transport rate' should be claimed.

\*\* Under HMRC rules this expense is taxable.

### UK Subsistence

Location	Rate
London (Bed and Breakfast)	£115
UK Other (Bed and Breakfast)	£75