



Department
for Environment
Food & Rural Affairs

Suite D
Unex House
Bourges Boulevard
Peterborough
PE1 1NG

T: 03459 [REDACTED]
[REDACTED] defra.gov.uk
www.gov.uk/defra

Our ref:ECM 59961
Date: 11 Jan 2021

[REDACTED]
National Oceanography Centre
British Oceanographic Data Centre
Joseph Proudman Building
6 Brownlow Street
Liverpool
L3 5DA

Dear [REDACTED]

**Contract Award Offer - Contract for the Management of the Marine
Environmental Monitoring and Assessment National Database (MERMAN)**

In confirmation of delivery milestones under this project, as agreed in recent correspondence with [REDACTED], Defra wishes to offer National Oceanography Centre this contract for the provision of the Management of the Marine Environmental Monitoring and Assessment National Database (the "Services"). The Services will be provided by the British Oceanographic Centre, a facility hosted by the Contractor.

This letter (the "Award Letter") and its Schedules (collectively, the "Agreement") set out the terms of the contract between Defra (the "Customer") and the National Oceanography Centre, (the "Contractor").

As this contract is offered electronically (via our Procurement database 'Bravo') please confirm acceptance of the offer by pressing the 'Accept Proposal' button.

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 (the "Conditions"). In the event of 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 Award Letter as they will not be accepted and may delay the conclusion of the Agreement.

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

1. The Services shall be performed at British Oceanographic Data Centre, Joseph Proudman Building, 5 Brownlow Street, Liverpool. Merseyside. L3 5DA
2. The specification of the Services to be supplied and the Contractor's response is set out in Schedule 1.

3. The charges for the Services shall be as set out in Schedule 2.
4. The Agreement shall commence on 01 January 2021 and expire on 31 March 2022.
5. The address for notices of the Parties are:

Customer

[REDACTED]
[REDACTED]
[REDACTED]
Defra
Seacole Building
2 Marsham Street
London
SW1P 4DF

Attention: [REDACTED]
[REDACTED]@defra.gov.uk

Contractor

[REDACTED]
National Oceanography Centre,
British Oceanographic Data Centre
Joseph Proudman Building
6 Brownlow Street
Liverpool
L3 5DA

Attention: [REDACTED]
[REDACTED]@bodc.ac.uk

6. 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 should be sent, quoting "ECM59961", to: Accounts-payable@defra.sscl.gov.uk (the Customer's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ. Within 10 Working Days of receipt of your acceptance of this letter via Bravo, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

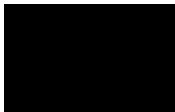
To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may 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 Accounts-Payable@defra.sscl.gov.uk or by telephone 0845 603 7262 between 09:00-17:00 Monday to Friday.

Liaison

For general liaison your contact will be [REDACTED]
[REDACTED], Defra, Seacole Building, 2 Marsham Street, London, SW1P 4DF

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. Acceptance of the offer comprised in this Agreement must be made within 7 days from the date of this Award Letter and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("Bravo"). 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 sincerely



[REDACTED]
Technical Services Team
Defra Group Commercial
T: 020 802 [REDACTED]
E: [REDACTED]@[Defra.Gov.uk](mailto:[REDACTED]@Defra.Gov.uk)

Contract for the Management of the Marine Environmental Monitoring and Assessment National Database (MERMAN)

Contract Reference: ecm_59961

December 2020

Contents

1. Interpretation	1
2. Basis of Agreement.....	5
3. Supply of Services	5
4. Term.....	6
5. Charges, Payment and Recovery of Sums Due.....	6
6. Premises and equipment.....	7
7. Staff and Key Personnel.....	8
8. Assignment and sub-contracting	9
9. Intellectual Property Rights.....	9
10. Governance and Records	11
11. Confidentiality, Transparency and Publicity	11
12. Freedom of Information	12
13. Protection of Personal Data and Security of Data	13
14. Liability	17
15. Force Majeure.....	18
16. Termination	18
17. Compliance	20
18. Prevention of Fraud and Corruption	21
19. Dispute Resolution	21
20. General	22
21. Notices	23
22. Governing Law and Jurisdiction	24
SCHEDULE 1 - Specification	25
SCHEDULE 2 – Prices.....	35
SCHEDULE 3 – Processing Personal Data and Data Subjects.....	36

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 via Bravo;
“Award Letter”	means the letter from the Customer to the Contractor printed above these terms and conditions;
“Bravo”	means the Customer’s electronic contract management system
“Central Government Body”	<p>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:</p> <p>Government Department;</p> <p>Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>Non-Ministerial Department; or</p> <p>Executive Agency;</p>
“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 National Oceanography Centre, whose operating address is at European Way, Southampton, SO14 3ZH. Company registration number: 11444362

“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;
“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 via Bravo 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 Customer 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 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 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 Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor 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 Contractor hereby grants the Customer:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub- license) 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; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub- license) to use:
- a. any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
 - b. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 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. 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 3 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 3);
 - 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.

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 Party in breach 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; or
 - 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 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 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.
- 20.6 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.
- 20.7 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.
- 20.8 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 - Specification

This Section sets out the Customer's requirements.

1. Background

- 1.1 This project is a continuation of management and support services for the Marine Environmental Monitoring and Assessment National Database (MERMAN). The project will ensure delivery of quality-assured marine environmental data to relevant parties in order to provide an evidence base to support policy decisions within the UK and Europe. The project will include minor enhancements to the MERMAN database, coordination of data submissions and transfer of quality-controlled data in a timely manner to the International Council for the Exploration of the Seas (ICES) and serving of manual data requests by other third parties. British Oceanographic Data Centre (BODC) have successfully delivered these products and services in the period 2006 to 2020 to the requirements defined by Defra and members of the Clean Safe Seas Evidence Group (CSSEG).
- 1.2 The Merman database is used to store, quality-assure and make available marine environmental contaminant data collected by the UK Competent Monitoring Authorities (CMAs). Since 2006 it has been hosted and managed by BODC, who ensure that the data are as widely available as possible and deliver data to national and international organisations on behalf of the UK to fulfil obligations agreed by the UK Government.
- 1.3 The documentation and training workshops which aid the data submission process will be updated throughout the project to improve the skills of users to ensure that data in MERMAN are used for research and development purposes. The helpdesk and data delivery procedure for MERMAN will build upon that already employed by BODC. This procedure records the details and tracks the progress of data requests. This ensures that access to data in MERMAN by the public is carefully controlled though data are released under Open Government Licence (as agreed by CSSEG)... The number and type of data requests will be reported to CSSEG. Close liaison with the CMAs and the reporting of progress through a Workflow Status Report to CSSEG will ensure that data are submitted to MERMAN in a timely fashion so that data can be checked by the CMAs prior to the transfer to ICES.
- 1.4 The expertise of BODC in database management and construction will be employed to oversee technical development of the database. The technical enhancements and data issues will be discussed in the MERMAN Focus Group each quarter and reported to CSSEG. Minor enhancements will be managed by BODC and technically developed by IBM within this contract. Larger projects will be specified within this contract to the point of applying for funding, however coordination and management of the implementation of any funded projects by BODC will be made separately.

- 1.5 To ensure coordination with the quality control schemes, BODC will attend at least half of the National Marine Quality Control Group meetings and provide written updates to those meetings not attended. At these meetings advice and instruction will be given to ensure the underpinning of the monitoring programme to provide quality data for assessments.
- 1.6 As the national marine data centre, BODC has a history of successfully managing data from large multidisciplinary projects that require the acquisition and storage of large quantities of data from diverse sources, applying quality control procedures and then disseminating the data according to agreed security criteria. This experience combined with participation at all levels within the UK Marine Monitoring and Assessment Strategy (UKMMAS) structure will provide a solid foundation for the management service of MERMAN.
- 1.7 BODC acts as the national data centre for the whole of the marine science community in the UK and has an international responsibility as part of the Intergovernmental Oceanographic Commission's network of data centres. BODC has forged good links with the ICES data centre over the last 24 and in particular 10 years by the submission of oceanographic and environment data. BODC also hosts the Marine Environmental Data and Information Network (MEDIN). Interaction within this work environment will ensure that MERMAN is integrated, complies and is complementary with other national and international data management initiatives. In particular, involvement in the UK Marine Strategy (UKMS; formerly the Marine Strategy Framework Directive) Working Group for Data Information and Knowledge Exchange and the EMODnet Chemistry coordination group will ensure that the data in MERMAN is used appropriately to meet the emerging requirements of the UKMS.

2. Objectives

- 2.1 The objective of the project is to manage the MERMAN application to allow the provision of quality controlled data in a timely fashion for national and international assessments.
- 2.2 With the exception of xii, the objectives are carried out each year as data are made available for UK and international initiatives. Specifically the objectives are:
 - i. Maintain and update the MERMAN User guide, strata and regions GIS layer, reference data and input templates to allow data submissions to run smoothly.
 - ii. Provide a timetable and advice to all submitters for the forthcoming submission period.
 - iii. Coordinate the timely submission of data from CMAs annually by the 1st June and host a helpdesk to ensure that any issues are resolved quickly.
 - iv. To liaise closely with the submitters and users by organising a Merman Focus Group meeting and reporting to CSSEG each quarter.

- Coordinate with the national marine quality control groups to ensure that quality data are available for assessments.
- v. Transfer data to ICES in the specified format by 1st September annually so it may be used in the OSPAR MIME assessment. In addition all MERMAn legacy data will be resubmitted to ICES over a two-year cycle to ensure that any amendments in previous monitoring years data is reflected in the ICES database.
- vi. Allowing users to interrogate up-to-date assessments by hosting the 'Flash Assessment Tool' on the BODC website
- vii. Transform MERMAn data and make it available to the EMODnet Chemistry project to meet the developing needs of the UKMS.
- viii. Ensure that CSSEG data are available to the widest audience by completing requests from the wider scientific community and public
- ix. Liaise with other national and international initiatives (e.g. MEDIN) to ensure the maximum value is made from the data.
- x. Maintain MERMAn webpages on the BODC website to raise the profile of the data and provide a central place for MERMAn-related information.
- xi. Implement the developing needs of CSSEG by overseeing enhancements to the structure and data management within MERMAn. Liaise with IBM to resolve database structural and maintenance issues.
- xii. Host a Business Objects workshop to improve the use of MERMAn data in the CMAs.

3. Approach and Methodology

- 3.1 The user guide, input spreadsheet, and reference data will be updated at least annually by the 1st February to assist the submission of data by CMAs. The strata and regions GIS layer will also be managed and updated as necessary which will then be used to calculate station names for opportunistic data and allow interrogation and assessment by national and international sea areas.
- 3.2 A number of deadlines must be met before the final submission of data to ICES each September. To ensure that these deadlines are fully understood and met, a timetable and associated advice will be given to CMAs by the 1st April annually.
- 3.3 The progress of the submission of the data collected by each CMA, or CMA region, to MERMAn in each monitoring year will be closely managed to ensure there is enough time to generate and check the ICES report. BODC has a great experience of 'chasing-up' data to meet deadlines and will apply these persuasive measures via e-mail, phone and in-person at meetings. A helpdesk facility will continue to be operated in conjunction with the dedicated MERMAn e-mail address and phone number. Positive feedback on the prompt operation of queries via the phone and e-mail in previous MERMAn contracts demonstrates that it is a valuable resource to submitters. Source data files submitted to the database will also be stored and backed-up.

- 3.4 Liaising with the users and submitters is essential to report progress and ensure that all needs are met. The MERMAN Focus Group which has met before each CSSEG will continue and the minutes from that meeting used as the basis for reporting progress to CSSEG. This will ensure frequent updates and 'buy in' from MERMAN users. At least half of the NMAQC meetings will be attended to ensure that the data in MERMAN are quality assured to a high standard for use in assessments.
- 3.5 Experienced staff within BODC will check the ICES report to be used for the transfer of data to ICES for any obvious errors and submit by the ICES deadline. Any issues with the data will be flagged at CSSEG and the Focus Group. Coordination between BODC and ICES will be facilitated by the project manager's long-term involvement with submissions. BODC staff who are also members of the ICES Working Group on Marine Data Management which will assist transfer of data and resolution of queries. Legacy data will be prioritised for resubmission to ICES over a two-year cycle to ensure that any updates to 'old' data are reflected in the ICES database in time for the MON assessment. More work may be required in a Quality Status Reporting year.
- 3.6 The 'Flash Assessment Tool' will be hosted on the BODC website and updated each year after the submission of data to ICES. The data will be extracted, the 'r' statistical programme run to produce all the images and then the flash application published on the website.
- 3.7 As part of the developing need to make data available for the purposes of UKMS, the data in MERMAN which passes the data filter will be extracted, transformed and made available on BODC servers to EMODnet. This work will primarily be funded by the EMODnet project however some extraction and manipulation of data prior to the transformation is required
- 3.8 Clean Seas Environment Monitoring Programme (CSEMP) data will be made available to the widest audience through the provision of data to 3rd parties and participation in other national and international initiatives. Data requests are completed in conjunction with the already established enquiries officer at BODC which is operated as part of the modus operandi of BODC. Any provision of data to third parties will be provided under the previously agreed data use agreement. Requests will be responded to within two days and data provided within five working days.
- 3.9 Representatives of the proposed BODC team are centrally involved in national (MEDIN) and international (ICES, EU SeaDataNet, EMODNET, WISEmarine) data initiatives and through attendance at meetings and feedback will ensure that MERMAN data are fully integrated and complementary to these other programmes. This will ensure that MERMAN data are easily discovered and reused so that maximum value is made.

- 3.10 MERMAN webpages will be maintained and regularly reviewed to ensure that they are current and provide all the information that submitters require. The pages will also provide sufficient information to allow interested parties to identify what data are available and how to access it.
- 3.11 BODC will coordinate with IBM to ensure that MERMAN is structured and implemented to satisfy the requirements of CSSEG. This will draw on the knowledge of CSEMP requirements, databases and data management systems already held by BODC staff and will be complemented by meetings with IBM, coordination with CMAs, CSEMP, the UK National Marine Analytical Quality Control (NMAQC) groups and reviewing the day-to-day development of MERMAN. Throughout the project, regular and frequent liaison will be made with IBM to ensure that the hardware and application of MERMAN is operating correctly. Any hardware or application problems will be immediately alerted to IBM via phone or email. Minor enhancements will be carried out within this contract. Any proposals for small projects required to the application will be drawn up and submitted for funding for IBM to conduct the technical changes. If the technical work by IBM for a small project is funded, then BODC must also be funded to carry out coordination of the work.
- 3.12 A Business Objects workshop was hosted in a previous contract which was a large success and raised CMAs' abilities to extract data easily to be used for assessments. As personnel change and new requirements for accessing data in different formats arise another workshop will be hosted.

4. Knowledge exchange

- 4.1 Using the close links to MEDIN and the UK Directory of Marine Observing Systems (UKDMOS), BODC will promote the use of MERMAN data to the wider community thus ensuring knowledge transfer. In addition to the usual requests, MERMAN data will be made available through the EMODnet Chemistry Portal and the Flash Assessment Tool thus significantly improving the availability of data and assessments.
- 4.2 BODC is part of the National Oceanography Centre and is a not-for-profit national facility whose sole remit is the stewardship and dissemination of data about the marine environment. As such, a key element of BODC's modus operandi is to ensure the maximum use of data and a principal performance metric is the number of requests serviced annually (159,106 for financial year 2018/19 and 172,793 for 2019/20). In support of this aim, BODC is involved in national (MEDIN) and international (ICES, EU SeaDataNet, EDIOS (EuroGOOS) and IOC's IODE) initiatives to improve access to data and information concerning the marine environment. Additionally, BODC is involved in a number of Knowledge Transfer activities to ensure the use of data for wealth creation and the societal benefit. Examples include the provision of quality-assured tidal data for flood protection

purposes and information on air/sea flux chemical and biological transfer rates to aid real time forecasts and climate predictions.

- 4.3 BODC is committed to further improvement in delivery of data and information and the addition of the CSEMP data set alongside the data holdings from other organisations will greatly increase the utility of the data for the CSEMP and wider community. Additionally, as part of our national remit we will readily provide data management advice to CMAs when appropriate. BODC will also update specific pages on our web site, in consultation with Defra and the CSSEG, designed to provide a background to CSEMP and highlight the availability of data.

5. Quality assurance

- 5.1 BODC will check that the procedures embedded within MERMAN accurately carry out the quality assurance as specified by the NMAQC Groups.
- 5.2 As the national data centre, BODC has in-house quality control procedures which will be applied to check that data sent to ICES do not contain any obvious errors. BODC is a Data Archiving Centre (DAC) for oceanographic data within MEDIN. As such, BODC complies with the MEDIN DAC principles which include: quality assurance of the collected data; databasing and banking with appropriate metadata standards; auditable process for long-term custodianship; and updating of data sets with appropriate disaster planning. These principles will be applied to the management of MERMAN.
- 5.3 There is not an ISO standard specifically for marine data management, however, BODC are implementing other international standards such as ISO19115 on metadata standards which may be applied to CSEMP data. This will ensure that CSEMP metadata can be easily included in other national and international catalogues such as EDMED, EDIOS and other UK initiatives that are currently at the proposal phase.

6. Project Management

- 6.1 Overall management responsibility for the MERMAN project at BODC and the representative for day-to-day contact with the Defra Project Officer will be [REDACTED]
- 6.2 Enquires can also be submitted to the project staff via the MERMAN email address: [REDACTED]
- 6.3 Reporting of the progress made and of any difficulties encountered in the project will be to CSSEG at each meeting and at more frequent intervals as required prior to the annual submission to ICES. Reporting to CSSEG will use the minutes of the

MERMAN Focus Group and additional documents as required, such as requests received for data and the status of submissions.

- 6.4 The project officer will be provided with the annual report on resource spend and provide approval. The report would also be sent to the Defra Policy Lead for approval.
- 6.5 The project uses documentation to support and outline the projects organisational approach to data management. The MERMAN user guide contains detailed guidelines on how to use the database and all the supporting methods, timetables and workloads. These documents relevant to the data management using MERMAN will be managed and made available via the BODC website. Further documentation includes additional user guides, data submission templates, Business Objects user guides, the MERMAN station dictionary and reference data.
- 6.6 The data in MERMAN is already available through Business Objects and via direct requests to BODC. Annual submissions are made to ICES which also meets the UKs commitment to EIONET and assessments of environmental status are completed through those initiatives in report form. The data are also made available to the EMODnet Chemistry project and can be viewed as assessments using the Flash Assessment Tool.
- 6.7 An annual report of resources and spend will be provided to Defra, Marine Scotland, the Welsh Assembly and the Devolved Administrations of Northern Ireland as required.

7. Project Team

7.1 [REDACTED], Grade 6.

[REDACTED] has successfully managed the previous MERMAN contract. [REDACTED] will continue to provide input for the management of MERMAN to provide quality data for national and international assessments and meet all the requirements of the users. [REDACTED] will identify development needs and ensure they are funded appropriately. [REDACTED] will attend CSSEG and other relevant meetings as required, track financial expenditure and will be the Project Manager. [REDACTED] will liaise with IBM to carry out and test enhancements to the application. [REDACTED] will also carry out day-to-day services to support [REDACTED] when required.

7.2 [REDACTED], Grade 6.

[REDACTED] will continue to be responsible for the day-to-day services and support for the management of MERMAN. This will include contacting CMAs to chase up data submissions, submit data to ICES, general quality control, uptake of legacy data and storage of submitted files. He will liaise with IBM and carry out and test enhancements to the application in support of [REDACTED]. Management of the helpdesk, responding to requests and assigning security will be part of [REDACTED]

remit, ensuring that requests for data and information are completed within the required time frame. [REDACTED] will also organise MERMAn training workshops and attend BECME and NMCAG meetings as required.

7.3 [REDACTED], Grade 6.

[REDACTED] will continue to be responsible for the content of the MERMAn webpages hosted on the BODC website. This will include updating the flash application each year with new data from the last assessment.

7.4 [REDACTED], Grade 7

[REDACTED] has over five years' experience in marine data management and four years of working on the GEOTRACES project, an international study of trace elements and isotopes, contributing to marine chemistry knowledge. [REDACTED] will support [REDACTED] and [REDACTED] in the management of MERMAn to provide quality data for national and international assessments. [REDACTED] will identify development needs and perform testing, contribute to submitting the ICES reports and carry out day-to-day services of the project to meet the requirements of the stakeholders.

8. Milestones

	Target date (dd/mm/yyyy)	No. of months from start date	Description of milestone
1	01/02/2021	1	Arrange Focus Group Meeting
2	01/02/2021	1	Maintain and update user guide, strata and region GIS, reference data and templates
3	01/04/2021	3	Build and distribute submission timetable to submitters, provide advice.
4	01/06/2021	5	Deadline for CMA submissions
5	01/09/2021	8	Deadline to submit data to ICES
6	10/09/2021	8	Chair MERMAn Focus Group, produce minutes, report to CSSEG, attend NMAQC meetings. Note: milestone is quarterly
7	01/11/2021	10	Oversee enhancements, and liaise with IBM. Resubmit legacy data to ICES. Transfer data to assessment tool and EMODnet
8	01/12/2021		Being UK MERMAn submission of UK ocean acidification data for UN SDG

9	01/12/2021	12	Maintain and update user guide, strata and region GIS, reference data and templates
10	01/03/2022	11	Annual report on resource spend to be sent to Defra customer for approval prior to invoice.
11	01/04/2022	12	Build and distribute submission timetable to submitters, provide advice.
12	01/05/2022	13	Organise and host a Business Objects workshop as necessary
13	01/06/2022	14	Coordinate submission of data to MERMAN and host helpdesk to assist process
14	10/06/2022	14	Chair MERMAN Focus Group, produce minutes, report to CSSEG, attend NMAQC meetings. Note: milestone is quarterly

9. Staff Time

Staff time per financial year in days (whole days only)						
Name of staff member. (If not yet appointed enter the task to be performed e.g. Res. Asst.)	20/21	21/22	/	/	/	Total Days
██████████	11	43				54
██████████	11	43				54
██████████ ██████████	8	32				40
██████████	0	12				12
Total staff days per year	30	130				160

SCHEDULE 2 – Prices

1. The Customer will pay to the Contractor no more than the fixed sum of:

£61,927 (exclusive of VAT).
2. Subject to any variation of the Project, the amount in paragraph 1, above, shall remain firm throughout the duration of the Contract.
3. In the event that the Contract is varied, the amount in paragraph 1 shall be adjusted by such reasonable sum as may be agreed, in writing, between the Customer and the Contractor.
4. The Payment arrangements shall be as follows:
 - Upon submission and Defra's approval of annual report for FY 20/21 - £12,386.
 - Upon submission and Defra's approval of annual report for FY 21/22 - £49,541.
5. All payments quoted are exclusive of VAT.
6. The Contractor shall provide the Customer with an invoice of eligible costs only.
7. Within 30 days of receiving an invoice satisfactory to the Customer, the Customer shall pay to the Contractor the amount of the eligible costs which the Customer reasonably consider to have been properly incurred by the Contractor in the carrying out of the Project during the relevant period.
8. The Customer is liable to the Contractor only for their respective payments in accordance with this Schedule.
9. Any overpayment to the Contractor made by the Customer, whether of Project price or of VAT, shall be a sum of money recoverable by the Customer.

SCHEDULE 3 – 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:

██████████ [@defra.gov.uk](mailto:██████████@defra.gov.uk) Nobel House, 17 Smith Square, London SW1P 3JR

3. The contact details of the Person accountable for data protection at the Contractor NOC are :

██████████
National Oceanography Centre,
Joseph Proudman Building
6 Brownlow Street
Liverpool
L3 5DA
United Kingdom_
██████████ [@noc.ac.uk](mailto:██████████@noc.ac.uk)
+44 (0)7880 ██████████

*National Oceanography Centre,
British Oceanographic Data Centre
United Kingdom*

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	Processing as necessary for the Management of the Marine Environmental Monitoring and Assessment National Database
Duration of the processing	For the term of this contract. All information will be stored, processed and transferred securely.

Nature and purposes of the processing	<p>The Contractor will be collecting information from stakeholders, storing the files on their systems, using the information to inform delivery of the contract. As sub-processors, any subcontractors will be subject to clause 13.11.</p> <p>Any data files and information sent to the Customer will be pseudonymised.</p>
MERMAN Protocols	<ol style="list-style-type: none"> 1. Submissions to MERMAN will have user emails within the files. These are a record of who was submitting at the time and should be allowed under GDPR due to the nature of MERMAN and the security of the system. In addition to scientific, legal and public good. 2. An up to date list of MERMAN users will be kept and regularly reviewed. We will pass on the information for any new users to IBM/DEFRA for the creation of their account. 3. We will seek assurances from IBM/DEFRA that they will adhere to GDPR protocols. 4. We will not pass on any information to other 3rd parties without the consent of the individuals involved. 5. We shall keep an up-to-date list of members of meeting groups such as the Focus Group, NMCAG, BECME and MERMAN and this will be reviewed regularly. 6. The MERMAN working folder will be restricted so that only MERMAN managers can Read and Write and some select senior managers will have access as contingency and limit points of failure. 7. At the start of the Financial Year we shall inform users of why we have their personal information and what we shall be using their information for. 8. Legacy users information will remain in-perpetuity under article 9 of the GDPR and the only information stored if not a MERMAN "User" will be in the emails which are not actively stored apart from in the MERMAN emails. 9. We will keep the License agreements of users who requested data in order to prove that we only provided data to appropriate persons. 10. We will log requests in-line with BODC procedure and delete request data within 30 working days of the request. 11. Defra has completed the Data Protection Impact Assessment: Screening Questions form for the MERMAN project.

Type of Personal Data	Name, employment address, job title, email address and telephone number of Customer and Contractor personnel.
Categories of Data Subject	Customer and Contractor personnel.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Contractor will destroy all data relating to the contract upon expiry or termination of this contract. The Customer will destroy all data relating to the contract 6 years after the end of the contract.