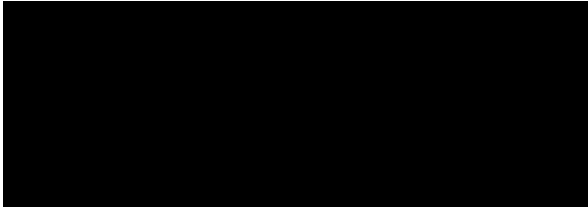




Department
for Environment
Food & Rural Affairs

T: 03459 335577
helpline@defra.gov.uk
www.gov.uk/defra



Our ref: ITT- 9441
Date: 17/12/2021

Dear 

Award of contract for an approach to impulsive noise mitigation in English waters (Revised) – ITT - 9441

Following your proposal for the supply of the above services to Department for Environment, Food and Rural Affairs, we are pleased to award this contract to you.



This letter (Award Letter) and its Annexes set out the terms of the contract between the Department for Environment, Food and Rural Affairs as the Authority and Environmental Resources Management as the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 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 Supplier terms and conditions to this Award 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 Supplier premises or their partners with some meetings possibly taking place at the Authority’s premises.
2. The charges for the Services shall be as set out in Schedule 2 of the attached terms and conditions of contract.
3. The specification of the Services to be supplied is as set out in the Supplier’s tender dated 26/11/2021

4. The Term shall commence on 20th December 2021 and the Expiry Date shall be 20th May 2022.

5. The address for notices of the Parties are:

Authority	Supplier
Department for Environment, Food and Rural Affairs ("DEFRA") Nobel House, 17 Smith Square London SW1P 3JR 	Environmental Resources Management Exchequer Court, 33 St Mary Axe London EC3A 8AA 

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

Name	Title
	
	

7. The Authority may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier 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 Authority, or is of a type otherwise advised by the Authority (each such conviction a "**Relevant Conviction**"), or is found by the Supplier 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

Our preference is for all invoices to be sent electronically, quoting a valid purchase order number (PO Number), to [REDACTED] 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, in PDF format and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section by email to [REDACTED]

Liaison

For general liaison your contact will be [REDACTED] or, in their absence, [REDACTED]

Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to 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 faithfully,

[REDACTED]

Commercial Officer
Defra Group Commercial

Execution of this award notification letter is carried out in accordance with EU Directive.

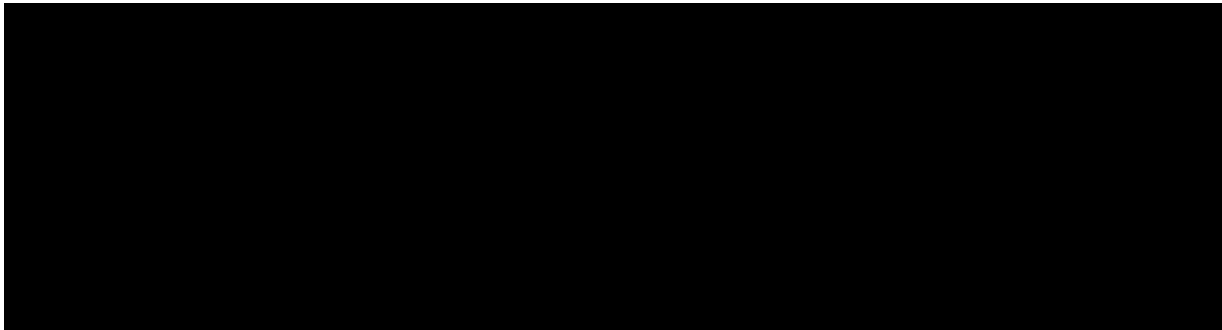
Signed for and on behalf of DEFRA

[REDACTED]

Date: 20/12/2021	Date: 20/12/2021
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We accept the terms set out in this Award letter and the annexed Conditions.

Signed for and on behalf of Environmental Resources Management



Annex 1- Terms and Conditions of Contract



Department
for Environment
Food & Rural Affairs

Conditions of Contract

Short Form - Services

November 2021

Terms and Conditions of Contract for Services

THIS CONTRACT is dated 17th December 2021

BETWEEN

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the "Authority"); and

ENVIRONMENTAL RESOURCES MANAGEMENT of Exchequer Court, 33 St Mary Axe, London, EC3A 8AA (the "Supplier")

(each a "Party" and together the "Parties").

BACKGROUND

- a) The Authority requires the services set out in Schedule 1 (the "Services").
- b) The Authority has awarded this contract for the Services to the Supplier and the Supplier agrees to provide the Services in accordance with the terms of the contract.

AGREED TERMS

1 Definitions and Interpretation

1.1 In these terms and conditions:

"Agreement"	means the contract between (i) the Authority acting as part of the Crown and (ii) the Supplier constituted by the Supplier's countersignature of the Award Letter and includes the Award Letter and Annexes;
"Award Letter"	means the letter from the Authority to the Supplier printed above these terms and conditions;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Charges” means the charges for the Services as specified in Schedule 2;

“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;

“Authority” means the person named as the Authority in the Award Letter;

“DPA” means the Data Protection Act 1998;

“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;

“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 Authority to the Supplier in writing;

“Party” means the Supplier or the Authority (as appropriate) and “Parties” shall mean both of them;

“Personal Data” means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Authority pursuant to or in connection with this Agreement;

“Purchase Order Number” means the Authority’s unique number relating to the supply of the Services;

“Request for Information” has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);

“Services”	means the services to be supplied by the Supplier to the Authority under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in Schedule 1;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Authority, the Authority’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“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 Authority 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

Supplier on receipt by the Authority of a copy of the Award Letter countersigned by the Supplier within 7 days of the date of the Award Letter.

3 Supply of Services

- 3.1 In consideration of the Authority's agreement to pay the Charges, the Supplier shall supply the Services to the Authority for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
 - 3.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority's instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier'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 Supplier'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 Authority may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier 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 Authority and the Supplier.

4 Term

- 4.1 The Agreement is effective on 17 December 2021 (the "Commencement Date") and ends on 30 May 2022 (the "Expiry Date") unless terminated early or extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Authority 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 Supplier 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 Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Supplier 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 Authority shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Authority as specified in the Agreement. Each invoice

shall include such supporting information required by the Authority 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 Supplier, the Authority shall pay the Supplier 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 Authority 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 the Authority fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier 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.
- 5.7 If a 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.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
 - 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
 - 5.8.2 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 5.8 of this Agreement.
 - 5.8.3 In this clause 5.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

6 Premises and equipment

- 6.1 If necessary, the Authority shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Authority’s premises,

on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Authority's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Authority 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 Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Authority's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Authority for the purposes of the Agreement shall remain the property of the Authority and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Authority shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Authority is notified otherwise in writing within 5 Working Days.

7 Staff and Key Personnel

- 7.1 If the Authority 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 Supplier:
 - 7.1.1 refuse admission to the relevant person(s) to the Authority's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
 - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority'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 Authority.

- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Authority, 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 Authority (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 Supplier shall not without the written consent of the Authority 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 Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier 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 Authority has consented to the placing of sub-contracts, the Supplier shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 8.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 Intellectual Property Rights

- 9.1 All intellectual property rights in any materials provided by the Authority to the Supplier for the purposes of this Agreement shall remain the property of the Authority but the Authority hereby grants the Supplier 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 Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Authority by operation of law, the Authority hereby assigns to the Supplier 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 Supplier hereby grants the Authority:
- 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 Supplier 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 Authority reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Supplier shall indemnify, and keep indemnified, the Authority 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 Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

10 Governance and Records

10.1 The Supplier shall:

10.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.

- 10.2 The Supplier 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 Authority. The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority 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 Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Authority:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Authority (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 Authority 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 Supplier hereby gives its consent for the Authority 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 Authority may consult with the Supplier 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 Supplier 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 Authority.

12 Freedom of Information

12.1 The Supplier acknowledges that the Authority 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 Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Authority 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 Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority'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 Authority.
- 12.2 The Supplier acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier 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 Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Authority as a data processor (as defined by the DPA) the Supplier shall:
 - 13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
 - 13.2.2 provide the Authority with such information as the Authority may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
 - 13.2.3 promptly notify the Authority of:
 - (a) any breach of the security requirements of the Authority as referred to in clause 13.3; and
 - (b) any request for personal data; and
 - 13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

13.3 When handling Authority data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Authority as notified to the Supplier from time to time.

14 Liability

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority 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 Supplier 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 Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Authority 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 Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

15 Force Majeure

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 Authority may terminate the Agreement at any time by notice in writing to the Supplier 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 Authority may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 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 Supplier 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 Supplier (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 Supplier's assets or business, or if the Supplier 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 Supplier shall notify the Authority 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 Supplier may terminate the Agreement by written notice to the Authority if the Authority 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 Supplier shall:
- 16.6.1 give all reasonable assistance to the Authority and any incoming supplier of the Services; and
 - 16.6.2 return all requested documents, information and data to the Authority as soon as reasonably practicable.

17 Compliance

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

17.2 The Supplier shall:

- 17.2.1 comply with all the Authority's health and safety measures while on the Authority's premises; and
- 17.2.2 notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Supplier shall:

- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Authority's equality and diversity policy as provided to the Supplier 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 Supplier shall supply the Services in accordance with the Authority's environmental policy as provided to the Supplier from time to time.

17.5 The Supplier 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 Supplier 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 Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier 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 Authority) the Authority may:

18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by the Authority 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

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 OF SERVICES

This Section sets out the Authority's requirements.

The Authority is the Department for Environment, Food and Rural Affairs. The Authority's priorities are to secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy, and secure food supply.

Background:

Increases in offshore wind deployment are needed to meet the government's target of delivering 40GW by 2030, however construction of these developments has the potential to harm the marine environment. A key area of concern is impulsive noise; impulsive noise is a pulsed sound that is often loud and has a sudden onset, primarily generated when clearing wind farm sites of unexploded ordnance (UXO), seismic surveys, and when installing turbine foundations. Marine mammals are sensitive to these noise sources, which have the potential to kill, injure or disturb without appropriate mitigation.

Noise Mitigation:

There are several ways in which reduced noise levels can be achieved when constructing offshore wind farms:

- Alternative turbine foundations (piling only)
- Alternative turbine foundation installation methods and alternative UXO clearance methods¹
- Noise abatement systems (NAS)²
- Coordination of noise outputs

Primary methods

Primary noise reduction methods lower the noise emitted at source. For example:

¹ Alternative UXO clearance methods refer to any method of removing Unexploded Ordnance [bombs, torpedoes, mines, other explosive devices] from the marine environment that does not result in a high-order detonation.

² Noise abatement systems refer to technologies that reduce noise at source or prevent the attenuation of noise through the marine environment. [Merchant Robinson 2020 Noise Abatement Workshop \(acoustics.ac.uk\)](https://acoustics.ac.uk/merchant-robinson-2020-noise-abatement-workshop)

- by changing the method of pile installation to a technique that does not create the same level of noise as a conventional hammer (e.g., Vibro piling³ or BLUE piling technology⁴).
- by using a different foundation that does not produce high noise levels when installed (e.g., gravity bases or suction bucket foundations).
- by using alternative methods of UXO clearance to high-order detonation.

Secondary methods

Secondary noise reduction methods reduce the noise that propagates through the water and include noise abatement systems such as bubble curtains, casings/sleeves, or resonator systems. The use of these techniques is usually complimented with visual/acoustic monitoring and acoustic deterrents to ensure animals are not within a defined distance before the activity begins.

Coordination

Another key mitigation measure is to avoid situations where multiple noisy activities occur on the same day. This is usually achieved by cooperation and coordination between operators. This cooperation is underpinned by agreements whereby noisy activities such as UXO disposal, seismic surveys or piling do not occur on the same day. Cooperation of this sort is often conditioned into marine licences which mean that when regulators are undertaking daily noise calculations within Habitats Regulations Assessments (HRAs) they do not have to consider those two noise sources in-combination as a worst case, thus reducing the cumulative noise exposure/disturbance levels in a site. Cooperation and coordination of this sort is useful where the activity in question covers a fairly short time window but not as effective where the activity has a long licence window, which is common for UXO, piling and seismic campaigns. In the future there will likely be a requirement for even more cooperation and coordination, particularly regarding piling activities where multiple windfarms are under construction in the same Harbour Porpoise Special Areas of Conservation (SAC).

For the purposes of this work, noise mitigation refers to primary and secondary noise reduction methods and coordination.

³ Unlike with impact pile driving, vibratory pile driving is a method in which the pile is vibrated into the sediment rather than being hammered in. [What is Vibratory Pile Driving and How Does it Compare to Impact Pile Driving? – Offshore Renewable Energy \(uri.edu\)](#)

⁴ BLUE Piling technology is an innovative piling solution that uses the deceleration of a large water mass to deliver a long-lasting blow to the pile. <https://www.ihciqip.com/en/products/piling-equipment/blue-piling-technology>

Increasing noise levels

As part of the consent process, developers are already required to implement marine mammal mitigation when undertaking noisy activities (e.g., bubble curtains are required on UXO detonations where the charge weight is over 50kg). However, it is anticipated additional levels of mitigation will be needed in the future to reflect increases in the size of turbine generators and their associated foundations, and to manage in-combination effects, which are a major concern given the number of developments required over the next ten years.

In addition, multiple developments are proposed within SACs designated for harbour porpoise. In June 2020, the Joint Nature Conservation Committee (JNCC) together with Natural England (NE) and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) published advice to competent authorities on what could constitute significant disturbance within harbour porpoise SACs in England, Wales and Northern Ireland marine areas. Using this advice, a noise management approach⁵ has been implemented to reduce disturbance from noise within these sites which includes spatial/temporal thresholds to ensure no more than 20% of the site is unavailable to harbour porpoise each day and 10% over a season⁶. However, there is a high risk these thresholds will be exceeded in the coming years, risking an adverse effect on site integrity.

With the increase in offshore wind development needed to meet the government's target of 40GW by 2030, and net zero by 2050, there is a high risk that the noise thresholds⁷ will be exceeded in the near future, particularly in the Southern North Sea SAC, causing disturbance to protected harbour porpoises and hampering construction timelines, potentially preventing Government targets being achieved. The scale of future development means that the current approach of scheduling activities is not likely to be sufficient mitigation to prevent the thresholds from being exceeded and additional management is required.

Concurrently, through the UK Marine Strategy, the UK is also committed **to achieve good environmental status (GES)⁸ on noise within all marine waters over which the UK**

⁵ [Guidance on noise management in harbour porpoise SACs | JNCC Resource Hub](#)

⁶ For example, a daily footprint of 19% for 95 days would result in an average of 19x95/183 days (summer) =9.86%

⁷ Guidance for assessing the significance of noise disturbance against Conservation Objectives of harbour porpoise SACs (England, Wales & Northern Ireland)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889842/SACNoiseGuidanceJune2020.pdf

⁸ GES is defined as the environmental status of marine waters where these provide ecologically diverse and dynamic ocean and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations. [Marine strategy part one: UK updated assessment and Good Environmental Status - GOV.UK \(www.gov.uk\)](#)

exercises jurisdiction, not just within protected areas. The current status of the underwater noise indicator⁹ (D11) is ‘uncertain’ and has not achieved GES.

Next Steps:

The introduction of additional mitigation measures could reduce impact footprints and enable better management of activities within these sites, reducing the risk of operations having to be delayed to remain within the disturbance thresholds.

Defra and BEIS are working together to investigate how additional noise mitigation could be used to substantially decrease the amount of underwater noise produced during offshore wind farm construction. This would help to ensure the UK meets its 2030 target whilst remaining below the noise thresholds. An outstanding question is whether the requirement for mitigation should be mandatory. This would level the playing field and provide ‘headroom’ for industries to continue to operate below the noise thresholds.

Aim:

The purpose of this project is to provide Defra and BEIS with information and a series of proposals to inform the management of impulsive noise in English waters; in particular, whether a new approach is needed for noise mitigation.

Scope:

The work will investigate regulatory requirements and mitigation for UXO clearance, seismic surveys, and offshore wind piling activities. The geographic scope would be both inside and outside of Marine Protected Areas (e.g., harbour porpoise SACs) in English waters (0 – 200 nautical miles or to the median line). The research would investigate both existing and new methods for noise abatement and mitigation, including approaches in use or tested in other countries.

Outline of work:

The proposed work is split into four parts and will be complemented by a stakeholder workshop which will inform all four parts of this work:

⁹ High level objective for the underwater noise indicator is ‘Loud, low and mid frequency impulsive sounds and continuous low frequency sounds introduced into the marine environment through human activities are managed to the extent that they do not have adverse effects on marine ecosystems and animals at the population level.’

1. Regulatory frameworks and existing approaches to noise management
2. Noise mitigation technologies
3. Investigation and design of options for a new management approach
4. Final report and proposals

1. PART 1: REGULATORY FRAMEWORKS AND EXISTING APPROACHES TO NOISE MANAGEMENT

Various mitigation options are available to prevent injury, and these are considered on a case-by-case basis dependant on the activity. JNCC has produced three sets of guidelines which recommend mitigation measures to prevent injury for pile driving¹⁰, explosives¹¹ and seismic surveys¹², compliance with which is often made a condition of consent. Where activities are close to breaching the thresholds, noise mitigation may be requested by regulators, as advised by the Statutory Nature Conservation Bodies (SNCBs). However, the need for mitigation to prevent marine mammal disturbance (rather than injury) is novel in UK waters, and is not routinely applied.

The following should be considered:

1.1. Outline the UK government regulatory and policy frameworks for offshore wind in English waters associated with impulsive noise.

The purpose of this section is to provide an understanding of the existing regulatory processes for offshore wind farms and how impulsive noise management and noise mitigation sit within them. This will demonstrate the ‘status quo’ of how noise is currently managed and will provide a baseline against which future management approaches can be compared.

The Contractor would be expected to:

- Provide an outline of UK government regulatory and policy frameworks for offshore wind in English waters, identifying where noise management and noise mitigation currently sits within the regulatory and policy frameworks.
- Provide an outline of how these frameworks may differ inside and outside protected areas.
- NOTE: The contractor is not required to provide any detailed legal analysis of said regulatory or policy frameworks.

1.2. Review noise thresholds and alternative management approaches implemented in other countries.

¹⁰ [Statutory nature conservation agency protocol for minimising the risk of injury to marine mammals from piling noise \(jncc.gov.uk\)](https://jncc.gov.uk/statutory-nature-conservation-agency-protocol-for-minimising-the-risk-of-injury-to-marine-mammals-from-piling-noise)

¹¹ [JNCC guidelines for minimising the risk of injury to marine mammals from using explosives](#)

¹² [JNCC guidelines for minimising the risk of injury to marine mammals from geophysical surveys](#)

The purpose of this review is to inform discussions regarding whether management approaches currently employed in other countries could be successfully applied to English waters.

In Germany, Denmark, the Netherlands and Belgium, noise mitigation is consistently applied during pile-driving to prevent both injury and disturbance, and to meet regulatory limits on noise levels.

The Contractor would be expected to:

- Provide an overview of the thresholds/approaches applied in the different countries, including consideration of the evidence to support the threshold applied and what mitigation is typically required to meet these thresholds.
- Consider the environmental conditions of the countries concerned and how these compare to UK waters; and whether similar thresholds would be practical in the UK including what additional benefits to nature conservation they could provide above existing regulatory processes.

2. PART 2: NOISE MITIGATION TECHNOLOGIES

A recently published report¹³ funded by Defra identified broad types of mitigation which could benefit marine mammals, including noise mitigation. Whilst this provides a beneficial overview of the general types of mitigation available (e.g., bubble curtains and, casing-based systems) more detail is required on specific brands and individual technologies so that Defra and BEIS have a thorough understanding of exactly what technologies are available, what are effective, and what require more testing before being commercially available.

2.1. Complementary workshop.

Defra and BEIS plan to host a workshop within the duration of this project to discuss advances in noise mitigation technologies and to discuss views on what a new approach to managing impulsive noise and noise mitigation could look like. This workshop will build on a similar workshop held in 2019¹⁴, to update on the state-of-play of noise mitigation technologies and to facilitate discussions with stakeholders to feed into the successful contractor's work. The outputs of these discussions will help to inform the final report for this project and recommendations contained within. A summary workshop report, including

¹³ [Mitigating the Impacts of Offshore Wind Farms on Protected Sites and Species in the UK](#)

¹⁴ [Merchant Robinson 2020 Noise Abatement Workshop \(acoustics.ac.uk\)](#)

stakeholder views and what technologies were discussed, will be produced and included in the final report as an annex.

The contractor will be required to attend the workshop and use the information from the workshop in their report to Defra and BEIS.

2.2. Review/summarise a) current foundations types available for offshore wind turbines b) alternative foundation installation techniques and c) current methods of UXO clearance, to identify where noise mitigation will be needed.

The purpose of this review is to provide an overview of the above activities to help identify where noise mitigation will be needed.

This section should provide context, so extensive detail is not needed, and appropriate sources of further information can be signposted. However, consideration of evidence supporting the effectiveness of different methods at reducing noise levels emitted is key. The review should consider the level of confidence in the available data, and the strengths/weaknesses of all the methods discussed including impacts the local environment can have on the ability for a method to be used and its effectiveness at reducing noise levels.

Consider existing methods in the context of each other (for example, identifying which is noisier), and identify new techniques that may be proposed in future consent applications, or ways in which existing methods may change in the future, and how this may impact noise generation in the marine environment (i.e., will they be louder or quieter than existing methods). Evidence gaps should be highlighted, and potential remedies can be considered. New evidence from the planned workshop should be included, including relevant feedback from stakeholders.

2.3. Review/summarise information on existing and evolving noise mitigation techniques, highlighting evidence gaps and lessons learned.

The purpose of this review is to build on the recently published report on mitigation¹⁵ and provide more granular detail on the specific brands and types of noise mitigation techniques that can be deployed in English waters.

This review should summarise existing information on the specific brands and types of noise mitigation technologies and, using information from the workshop and through discussions

¹⁵ [Mitigating the Impacts of Offshore Wind Farms on Protected Sites and Species in the UK](#)

with stakeholders, identify what specific technologies are available (and at what stage of commercial readiness) and what novel technologies are in development. Whilst at the contractor's discretion, a useful output could be a table with a RAG rating detailing all technologies and their ability to be deployed in English waters. Consider evidence supporting the effectiveness of the different methods, including the level of confidence in that data, and the strengths/weaknesses of all the methods discussed (e.g. impacts of local environment on effectiveness).

2.4. Costs and supply chain considerations

For Parts 2.2 and 2.3, the reviews should also consider current supply chains and ability to deploy different methods at scale, and the financial and environmental costs of implementing. The Contractor is expected to:

- Undertake a review of the existing and upcoming mitigation technologies' impact on construction schedules and costs. This should include (but not exhaustive), number of additional vessels, increased installation time per monopile, power requirements. This should be presented against each mitigation technology expressed in time and cost per GW installed.
- Undertake a review of supply chain opportunities as a result of noise mitigation requirements. This should include summary of where the current and future technology expertise is being developed, assessment of the value of the opportunities in monetary and in jobs potential to the UK.

3. PART 3: INVESTIGATE AND DESIGN NEW MANAGEMENT APPROACHES

Using the information gathered from Parts 1 and 2, the contractor will investigate and design a series of potential/proposed new management approaches for noise mitigation in English waters, considering what approach would be most effective in terms of compliance and noise reduction. These management approaches could include but are not limited to:

- a voluntary approach to encourage all developers to use noise mitigation.
- enforcing a noise decibel limit.
- enforcing reduction in noise by a fixed percentage. implementing a noise levy.
- mandating the use of a particular technology/technologies; and
- an approach for coordinating high noise activities over space and time.

The Contractor will be expected to outline how each management approach would work in English waters, whether additional regulation/legislation is required, and clearly set out the pros and cons of each option. The aim of this is to support Defra and BEIS in their decision-making around what a future management approach should look like.

For the “approach for coordinating high noise activities”, the contractor should consider exploring and describing a management approach whereby regulators and operators can coordinate activities to avoid same-day noisy activities, primarily piling. By 2023 – 2024 onwards, it is expected that there will be multiple piling events from different windfarms occurring in the southern North Sea SAC and, even with all mitigation measures in place, the cumulative noise levels may still be too high and further coordination will be required. Liaising with industry and regulators, the contractor should identify:

- If it is possible to coordinate alternate piling activities between projects, what difference would this make to in-combination assessments of the daily noise limits?
- When in the project planning phase would such an approach need to be considered? (i.e., Contract for Difference (CfD), examination, Site Integrity Plan (SIP) drafting phase)
- How would cooperation between operators and industry best be facilitated i.e., would it require a sea users’ group and does any appropriate forum exist?
- To facilitate planning, would it be necessary to employ a cut-off date for high noise applications?

4. PART 4: FINAL REPORT AND PROPOSALS

Outputs from all the above are to be presented in a final report with discussions considering the following:

- Provide an updated review of noise abatement technologies, including any gaps in evidence regarding effectiveness and whether available to be used at a commercial level.
- Identify potential gaps/weaknesses in the current consenting process in relation to mitigation and proposals for improvements, including whether additional regulatory processes are needed, including mandating the need for noise mitigation.
 - How could changes to regulatory process be achieved, what would be required to enable it and what benefits to nature conservation would result above the existing process.
- Consider financial costs to government to implement regulatory changes, and costs to developers to comply with requirements.
- Consider the costs of implementing any changes against the benefits to nature conservation.
- Consider whether any recommendations apply to specific activities and whether changes can/should be applied across other industries.
- Consider whether recommendations would differ in and outside of MPAs designated for marine mammals.

A draft copy will be submitted to Defra and BEIS for review by the project's steering group¹⁶, with the final version addressing comments received.

Key Deliverables:

A final report that provides a strong understanding of the existing process and guidelines surrounding noise mitigation in English waters, assesses what technologies are upcoming and available to reduce/mitigate noise, and investigates what an effective management approach for noise mitigation could look like in practice.

To achieve this, the Contractor will:

- Collaborate with Department for Environment, Food, and Rural Affairs (Defra), Department for Business, Energy and Industrial Strategy (BEIS), regulators and Statutory Nature Conservation Bodies (SNCBs) to gather views and inform recommendations.
- Collaborate with representatives of the Underwater Noise Strategic Advice Group to gather stakeholder views and data to inform overall recommendations.
- Attend the planned stakeholder workshop, using the discussions and issues raised to shape recommendations to UK government.
- Collaborate with Cefas, JNCC, Defra and BEIS on ongoing parallel research investigating noise mitigation to ensure the latest evidence is being fed into recommendations.

The final report will be submitted to Defra and BEIS and a summary presentation given to the Underwater Noise Strategic Advice Group.

Key timescales:

Contract award anticipated by **8th December** with project commencing **17th December 2021**.

Project duration anticipated as **5 months**.

A draft report will be delivered by week commencing **18th April 2022**.

The project must be completed, and final report delivered, no later than **20th May 2022**.

¹⁶ All comments will be collated before providing to the contractor.

Price, Fee schedule and Payments:

The project will be let on a fixed price basis (excluding VAT). This is an all-inclusive price for the contract and, so long as the scope of the contract remains the same, it is not subject to any review, amendment, or alteration.

Tenderers should provide a breakdown showing the allocation of resources across different components of the project by all key individual members of the proposed team.

Tenderers should draft a pricing schedule which will provide information on daily rates, overheads, and other related costs for carrying out the work. Payments will be made by milestones. Proposals should include a suggested invoicing schedule based on milestones identified in the programme of work.

Please refer to page 20 for further instructions on completing the pricing schedule.

Quality:

Tenderers should demonstrate how they will ensure high quality is maintained in carrying out the project, including any formal internal quality control procedures.

DEFRA requires the opportunity to comment on draft final reports. The appointed contractor will be responsible for ensuring both the quality of the work as well as the presentation of the material (e.g., proof reading, ensuring clear English). The draft final report will be peer-reviewed in line with DEFRA Quality Management Standard. DEFRA will be responsible for arranging this.

SCHEDULE 2 PRICES

Payment Schedule

[illegible]