



Department  
for Environment  
Food & Rural Affairs

T: 03459 335577  
helpline@defra.gov.uk  
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██████████  
MarineSpace Ltd,  
Ocean Village Innovation Centre,  
Southampton,  
Hampshire  
SO14 3JZ

Our ref: ITT- 9514  
Date: 24/12/2021

Dear ██████████

## **Award of contract for Compensatory measures for impacts of offshore windfarms on benthic habitats – ITT – 9514**

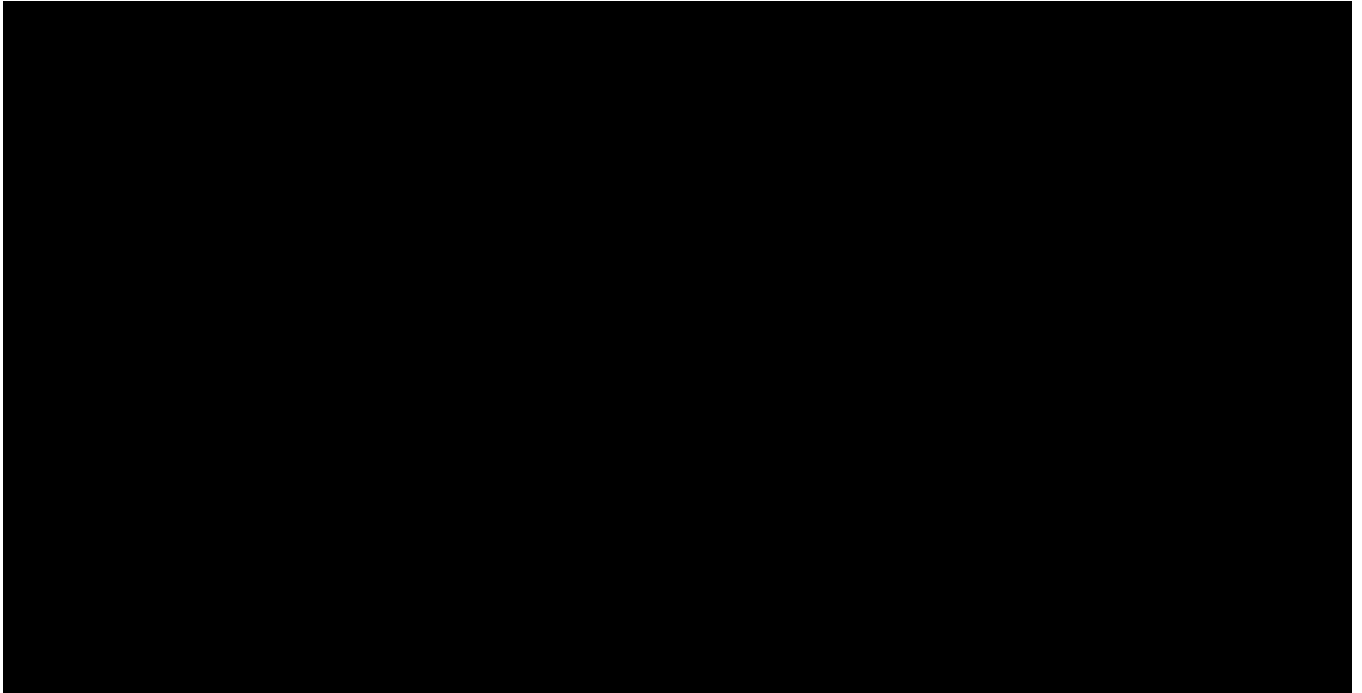
Following your proposal for the supply of the above services to the Natural England, we are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the contract between the Natural England as the Authority and MarineSpace Ltd 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.

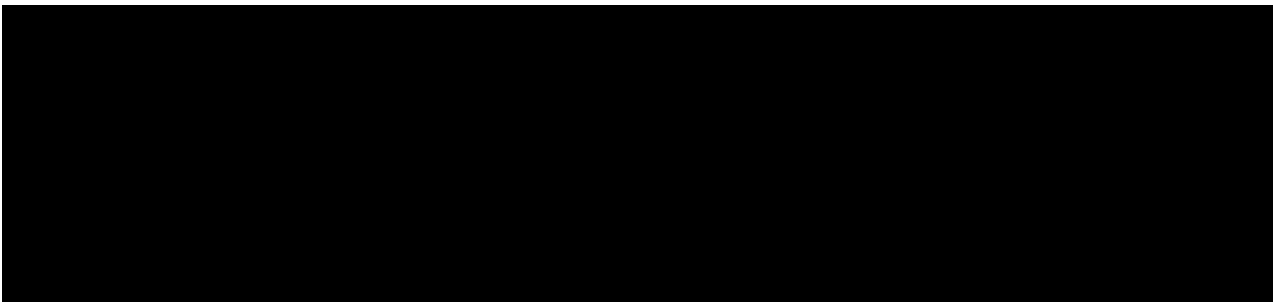
For the purposes of the Agreement, the Authority and the Supplier agree as follows:

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 10/12/2021
4. The Term shall commence on 31<sup>st</sup> December 2021 and the Expiry Date shall be 31<sup>st</sup> March 2022.
5. The address for notices of the Parties are:



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



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 [Accounts-payable.neg@gov.sscl.com](mailto:Accounts-payable.neg@gov.sscl.com). 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 [Accounts-payable.neg@gov.sscl.com](mailto:Accounts-payable.neg@gov.sscl.com).

## Liaison

For general liaison your [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[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.

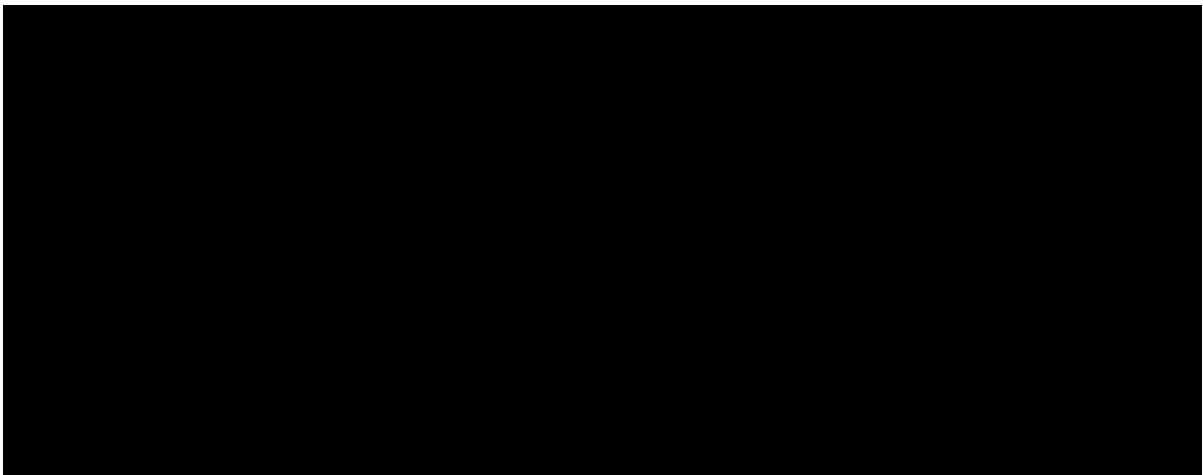
Yours faithfully,

[REDACTED]

Commercial Officer  
Defra Group Commercial

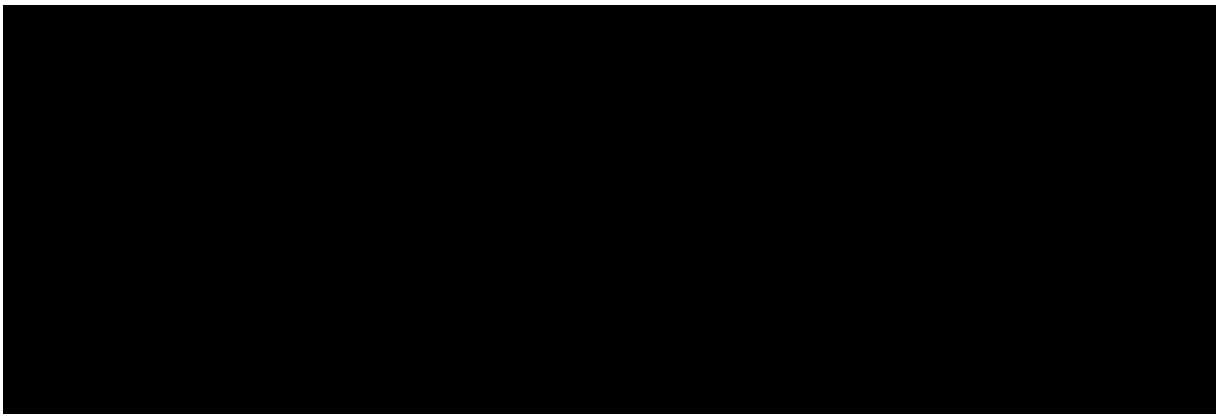
***Execution of this award notification letter is carried out in accordance with EU Directive.***

Signed for and on behalf of DEFRA



We accept the terms set out in this Award letter and the annexed Conditions.

Signed for and on behalf of MarineSpace Ltd





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 24<sup>th</sup> December 2021

BETWEEN

DRINKING WATER INSPECTORATE of 1A Nobel House, 17 Smith Square, London, SW1P 3JR (the “Authority”); and

MARINESPACE LTD of Ocean Village Innovation Centre, Southampton, Hampshire, SO14 3JZ (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 **Error! Reference source not found.**, 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 **Error! Reference source not found.**, 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 **Error! Reference source not found..**

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 **Error! Reference source not found.**; 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 **Error! Reference source not found.** 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 **Error! Reference source not found.**), 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, **Error! Reference source not found.**, 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 **Error! Reference source not found.** 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, **Error! Reference source not found.**, 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** 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 **Error! Reference source not found.**, 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 Error! Reference source not found., 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 Error! Reference source not found..

## **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

### ***An assessment of compensatory measures for impacts of offshore windfarms on benthic habitats.***

#### **1. Introduction**

Natural England is seeking to procure a Contractor to provide an assessment of where benthic compensation could be delivered within English waters on a 'same designated feature' basis, with respect to benthic habitats listed on Annex 1 of the Habitats Regulations and within the MCZ ecological network guidance. Natural England will provide a list of the relevant habitats based on those most vulnerable to offshore wind development.

The project's findings will inform Natural England's decision-making in providing advice to developers and regulatory authorities on compensation measures for benthic habitats.

#### **2. Background**

Addressing the UK's policy ambitions for offshore wind requires significant expansion and faster deployment of new generating capacity. Government has set out the target of delivering 40GW by 2030. In addition to 2.8 GW being developed through extensions to Round 2 and Round 3 wind farms, the Round 4 tender process has identified just under 8 GW through six new offshore wind projects. There are also 300MW of test and demonstration floating wind projects in the Celtic Sea, and the government has set out a commitment for 1GW of floating wind in UK waters by 2030.

Large scale offshore wind farm development has the potential to interact with species and habitats of conservation importance and there are significant concerns regarding the cumulative risk of adverse effects on protected sites and species in the UK. The focus of this project will be on benthic habitats.

#### **3. Benthic Impacts from Offshore Wind Farms**

The installation of turbines, sub-stations, inter-array cabling and export cables impact subtidal and intertidal habitats. Many impacts are specific to the installation method used including foundation type with associated seabed preparation and methods of cable laying e.g. clearance activities undertaken before cable installation, the use of

construction vessels, anchoring, jack-up vessels, scour protection, external cable protection and spoil disposal.

Given the scale of planned development and the likely implications for benthic habitats of protected sites in the North Sea, Irish Sea and Celtic Sea, it is possible that adverse effects on several SACs and MCZs may not be able to be avoided or mitigated.

Some projects will therefore require the provision of compensatory measures. The term compensatory measures in this tender document is an umbrella term to cover measures which are taken to sufficiently compensate for a negative impact on a designated site. Designated sites include Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Marine Conservation Zones (MCZs). The use of compensatory measures allows a project to be consented in the knowledge that the overall coherence of the MPA network (and associated features and conservation objectives) is maintained.

[Defra commissioned a review of compensation measures](#) which defines what is meant by compensation measures.

There are two contexts in which ‘compensatory measures’ may be considered:

- Habitats Directive: the term ‘compensatory measures’ has a specific meaning under Article 6(4) of the Habitats Directive. Under Article 6(4) of the Habitats Directive, compensatory measures must be put in place if a plan/project is judged to have an adverse effect on the integrity of SACs or SPAs but will be taken through the ‘derogation route’.
- Marine and Coastal Access Act section 126, requires that; ‘Measures of Equivalent Environmental Benefit (MEEB)’ to the damage which an activity is likely to have in/on an MCZ must be secured if the activity is progressed under the derogation route.

Compensation should be considered a last resort where there is only remaining ‘unmitigable’ risk and where the derogations/exceptions tests can be met.

To date Natural England has advised that compensation will be needed for the Annex 1 features: ‘sandbanks which are slightly covered by sea water all the time’ and ‘reefs’, and for soft sediment MCZ features.

#### **4. Current Evidence for Compensatory Measures**

There is significant uncertainty in understanding and designing effective compensation measures in the marine area, and there is little evidence of delivery from examples

around the world, as was highlighted in [Defra's review of compensation measures](#) that have been implemented in the UK and internationally.

Natural England needs robust evidence to inform our advice on the sufficiency of proposed benthic compensatory measures and the likelihood of being able to deliver compensation on a same designated feature basis with regard to future impacts on MPAs.

Natural England is therefore seeking to procure a contractor to undertake a phased project to provide an assessment of where compensation measures could be delivered on a same designated feature basis (as defined by Annex 1 features under the Habitats Directive and MCZ features), to support making such judgements in relation to benthic habitats, noting that specific measures would need to be developed on case-by-case basis.

## **5. Aim**

The aim of the project is to assess if there are areas within UK waters where compensation can be delivered on a same designated feature basis (based on the definition within Annex 1 of the Habitats Directive and MCZ features listed within Tables 1 and 2 of the [Ecological Network Guidance](#)).

The project is divided into two phases:

### **Phase 1**

The purpose of this phase is to determine what the differences and similarities are between the ecological functions of habitats that are classed the same under Annex 1 of the Habitats Directive or as the same MCZ feature but are different.

Recognising that habitats identified at the Annex 1 feature (and sub-types) and MCZ feature level are not identical e.g. the sandbanks within Margate and Longsands SAC are considered mobile, but those within the Dogger Bank SAC are considered fixed or relic, undertake an appraisal of the ecological functions and environmental requirements of the habitats, to determine what the ecological similarities and differences are e.g.

- different rocky habitats which are classed as reef under Annex 1 and MCZ criteria e.g. granite reefs compared to chalk reefs
- different biogenic habitats which are classed as reef under Annex 1 and MCZ criteria e.g. sabellaria spinulosa and blue mussel beds
- different sandbank habitats which are classed as sandbanks slightly covered by seawater at all times under Annex 1 and relevant MCZ criteria e.g. highly mobile and more fixed banks.

Natural England will provide a list of relevant habitats at the start up meeting.

### **Phase 2**

NE will provide access to our marine evidence base broad scale habitats mapping layer and other relevant mapping layers.

Using the findings from Phase 1 determine where the locations are of the Annex 1 habitats (and sub-types) and MCZ features that perform the same or similar ecological functions.

## **6. Objectives**

- Determine what the ecological functions are and any similarities or differences in them between habitats and sub-types that are classed as the same Annex 1 habitat or MCZ feature, but are not considered identical e.g. fixed and mobile sandbanks, granite and chalk reefs, sabellaria spinulosa and blue mussel beds. This will determine if habitats which are classed as the same, or the same sub-type under Annex 1 or MCZ ENG but are not identical could potentially be used as 'same feature' compensation as their ecological functions are the same or similar.
- Determine the location of Annex 1 and MCZ habitats or sub-types that perform the same ecological function.

## **7. Methods**

The Contractor will agree a robust approach at the outset of the project with Natural England. Within their Tenders, Tenderers must set out their suggested methodology for achieving the aims of the project, as well as a breakdown of how much time will be spent on each Phase. In line with the objectives above, the methods should include considerations of:

- Confidence in the mapping/data used to determine the locations and areas of habitats, and if there are any limitations to its use e.g. is it based on modelled or survey data.
- How it was determined that the habitats fit the broad Annex 1 and MCZ features.
- The evidence sources that will be needed to determine the current activities and pressures occurring in the locations identified in Phase 1.
- How to compare the ecological functions and the data used to determine what they are.
- The technical expertise and experience needed to undertake the contract.
- The timescales needed to undertake the different phases of the project.

## **8. Deliverables**

To achieve the objectives of this project the Contractor is expected to deliver:

### Phase 1

- A report that details the differences and similarities in the ecological functions between the habitats determined by Natural England at the start of the contract. This should contain how the assessments/judgements were made and the confidence levels in them.

### Phase 2

- A report that details the locations of the Annex 1 and MCZ habitats which perform the same or similar ecological functions.



## Relevant background information sources to refer to

For methodological approaches to the review and synthesis, the following documents are suggested:

- Guidelines and Standards for Evidence Synthesis in Environmental Management (2018) Collaboration for Environmental Evidence - <https://environmentalevidence.org/information-for-authors/>
- Natural England Evidence Reviews: guidance on the development process and methods (2013) – <http://publications.naturalengland.org.uk/publication/5724390?category=5968803>

Upon contract award, Natural England will provide other relevant material.

## 9. Proposed timeline

This project will run for up to three months and key milestones are set out below. Please note that the proposed timelines are subject to change and any proposals that detail approaches that reduce the total project duration are encouraged.

Details	Payment schedule	Date (by)
Project inception tele-call between contractor and Natural England		Within a week of contract start date
Inception report detailing how phase 1 will be undertaken (2-page max)		Within a week of contract start date
End of phase 1 interim report and tele-call/virtual workshop between Natural England and contractor to discuss report, identify and resolve any problems and agree final approaches and next steps for Phase 2.	1 <sup>st</sup> Payment	End of February 2022

Draft final report to be provided by contractor to Natural England.	2 <sup>nd</sup> Payment	End of 2 <sup>nd</sup> week in March 2022
Comments on draft final report to be provided to contractor by Natural England.		End of 3 <sup>rd</sup> week in March 2022
Final report and associated products to be delivered by contractor to Natural England incorporating additions/ amendments in light of comments received from Natural England	Final payment	31 <sup>st</sup> March 2022

The Authority will review the final draft report in MSWord to NE Style template (provided at inception) in plain English. The final report(s) will then incorporate the comments and recommendations identified by the Authority and the successful bidder at the draft final stage.

## 10. Payment Methods

Payment will be following satisfactory quality assurance of the below agreed outputs/deliverables.

Description of milestone		Payment %
1	End of Phase 1 interim report	50 %
2	Draft final report	25 %
3	Delivery of final report	25 %

## 11. Contract Management

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

There will be a project inception meeting, and a review meeting at the end of each Phase, followed by a closing project meeting to discuss the final report.

We will raise purchase orders to cover the cost of the services and will issue to the Contractor following contract execution.

Payment will be received on completion of the final report.

## **12. Disclosure**

All Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies are subject to control and reporting within Government. They report to the Cabinet Office and HM Treasury for all expenditure. Further the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.

For these purposes, the Authority may disclose within Government any details contained in your quotation. The information will not be disclosed outside Government during the procurement.

In addition, the Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, which provide a public right of access to information held by public bodies. In accordance with these two statutes, the Authority may be required to disclose information contained in your quotation to any person who submits a request for information pursuant to those statutes.

By submitting a quotation, you consent to these terms as part of the procurement.

## **13. Disclaimers**

Whilst the information in this RFQ and any supporting information referred to herein or provided to you by the Authority have been prepared in good faith the Authority does not warrant that this information is comprehensive or that it has been independently verified.

The Authority does not:

- make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the RFQ;
- accept any liability for the information contained in the RFQ or for the fairness, accuracy or completeness of that information; or
- accept any liability for any loss or damage (other than in respect of fraudulent misrepresentation or any other liability which cannot lawfully be excluded) arising as a result of reliance on such information or any subsequent communication.

Any Tenderer considering entering into contractual relationships with the Authority following receipt of the RFQ should make its own investigations and independent assessment of the

Authority and its requirements for the goods and/or services and should seek its own professional financial and legal advice.

#### **14. Protection of Personal Data**

In order to comply with the General Data Protection Regulations 2018 the contractor must agree to the following:

- You must only process any personal data in strict accordance with instructions from the Authority
- You must ensure that all the personal data that we disclose to you or you collect on our behalf under this agreement are kept confidential.
- You must take reasonable steps to ensure the reliability of employees who have access to personal data.
- Only employees who may be required to assist in meeting the obligations under this agreement may have access to the personal data.
- Any disclosure of personal data must be made in confidence and extend only so far as that which is specifically necessary for the purposes of this agreement.
- You must ensure that there are appropriate security measures in place to safeguard against any unauthorised access or unlawful processing or accidental loss, destruction or damage or disclosure of the personal data.
- On termination of this agreement, for whatever reason, the personal data must be returned to us promptly and safely, together with all copies in your possession or control.

#### **15. Quality Assurance/General Data Protection Regulation**

For the purposes of the Regulations the Authority is the data processor.

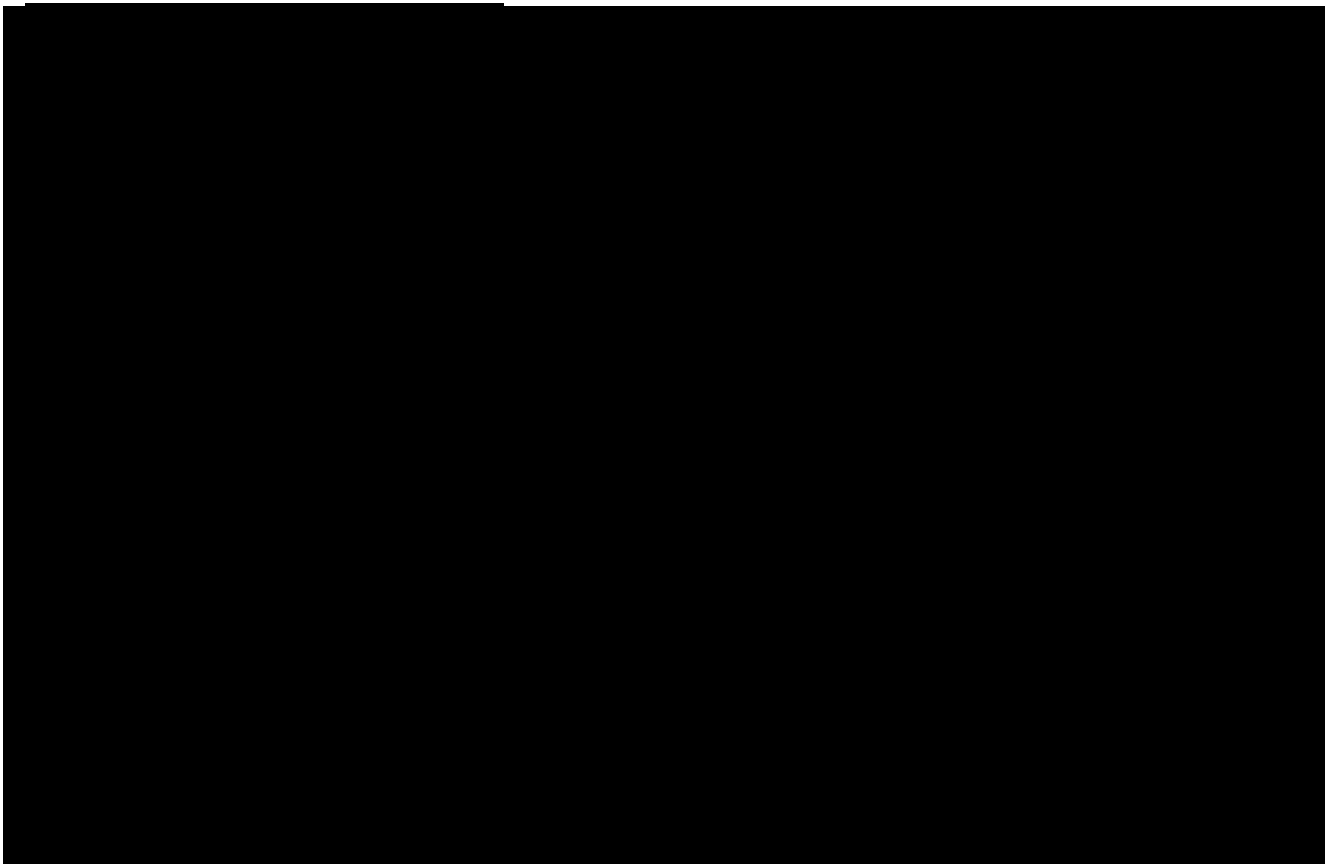
The personal information that we have asked you provide on individuals (data subjects) that will be working for you on this contract will be used in compiling the Tender list and in assessing your offer. If you are unsuccessful the information will be held and destroyed within two years of the award of contracts. If you are awarded a contract it will be retained for the duration of the contract and destroyed within seven years of the contract's expiry.

We may monitor the performance of the individuals during the execution of the contract, and the results of our monitoring, together with the information that you have provided, will be used in determining what work is allocated under the contract, and in any renewal of the contract or in the award of future contracts of a similar nature. The information will not be disclosed to anyone outside the Authority without the consent of the data subject, unless the Authority is required by law to make such disclosures.

#### **Please Note:**

Tenderers must be aware that all Tenders are submitted in acceptance of agreed Authority's terms and conditions of Contract. Any clarifications regarding terms and conditions must be discussed & agreed during the Tender period. No discussion of terms and conditions of Contract shall be held following Tender submission. Failure to agree with the terms and conditions of Contract post Tender shall result in a Tender being deemed non-compliant

## SCHEDULE 2 PRICES



### **Payment Schedule**

All payment shall be made to the supplier on the date for completion of each deliverable milestone outlined in this Schedule 2 Prices. This payment will be subject to the payment terms outlined in Annex 1 – Conditions of Contract.

All payments shall be payable by the Authority within 30 days of receipt of a valid invoice from the supplier on completion of each milestone outlined in this Schedule 2 Prices.

