



Department
for Environment
Food & Rural Affairs

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

Our ref: itt_9526
Date: 17/12/2021

Dear [REDACTED],

Award of contract for Tender for Developmental Evaluation of Marine Conservation Management – ITT – 9526

Following your proposal for the supply of the above services to Marine Management Organisation (MMO), we are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the contract between Marine Management Organisation as the Authority and ICF Consulting Services Limited 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 30/11/2021
4. The Term shall commence on 17th December 2021 and the Expiry Date shall be 1st April 2022
5. The address for notices of the Parties are:

Authority	Supplier
Marine Management Organisation	ICF Consulting Services Limited
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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

Name	Title
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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]
[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.

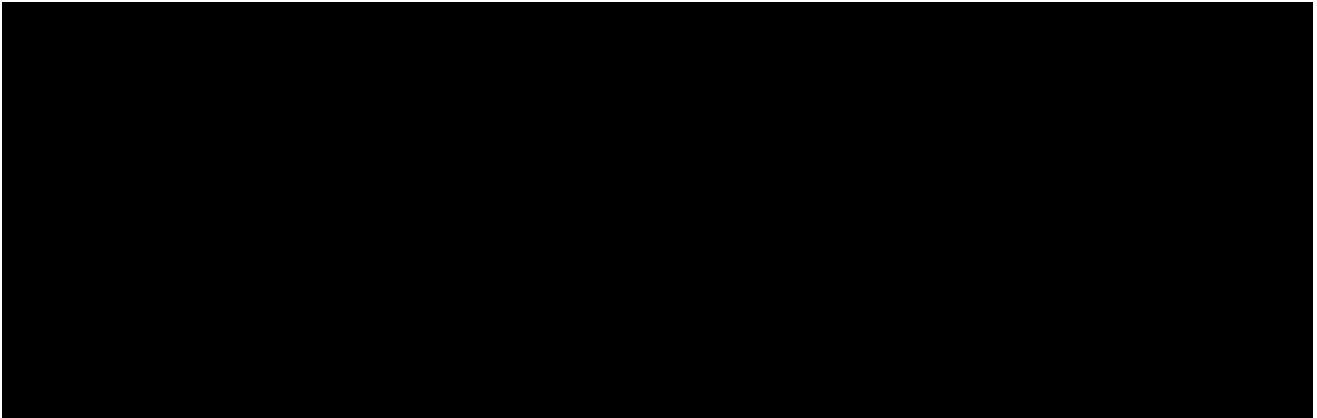
Yours faithfully,

[REDACTED]

Commercial Officer
Defra Group Commercial

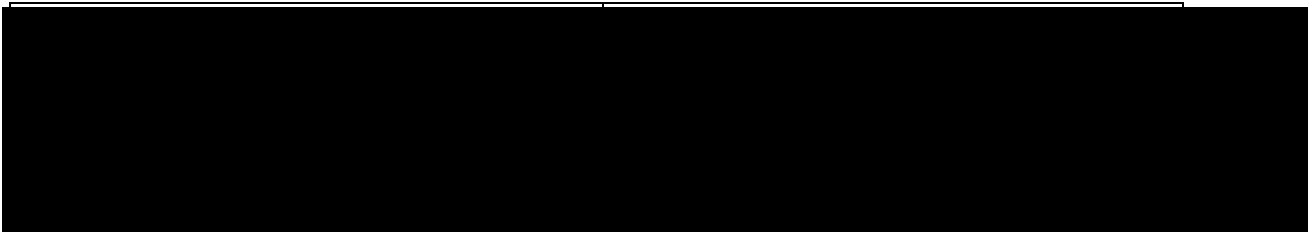
Execution of this award notification letter is carried out in accordance with EU Directive.

Signed for and on behalf of Marine Management Organisation



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

Signed for and on behalf of ICF Consulting Services Limited



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

MARINE MANAGEMENT ORGANISATION of [REDACTED]
[REDACTED] (the "Authority"); and

ICF CONSULTING SERVICES LIMITED of [REDACTED]
[REDACTED]
(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 2018;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“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 25 November 2021 (the "Commencement Date") and ends on 1 April 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 Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor unless otherwise specified in Schedule 1. The only processing that the Supplier is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Supplier.

13.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

13.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 1 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures), having taken account of the:
 - (i) *nature of the data to be protected;*
 - (ii) *harm that might result from a Data Loss Event;*
 - (iii) *state of technological development; and*
 - (iv) *cost of implementing any measures;*
- (c) ensure that :
 - (i) *the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);*
 - (ii) *it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:*
 - (A) *are aware of and comply with the Supplier's duties under this clause;*
 - (B) *are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;*
 - (C) *are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and*
 - (D) *have undergone adequate training in the use, care, protection and handling of Personal Data; and*

(d) not transfer Personal Data outside of the European Union unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(iii) *the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with the UK GDPR Article 46) as determined by the Customer;*

(iv) *the Data Subject has enforceable rights and effective legal remedies;*

(v) *the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and*

(vi) *the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;*

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

13.5 Subject to clause 13.6 the Supplier shall notify the Customer immediately if, in relation to any Personal Data processed in connection with its obligations under this Agreement, it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority;

(e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

13.6 The Supplier's obligation to notify under clause 13.6 shall include the provision of further information to the Customer in phases, as details become available.

13.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Agreement and any complaint, communication or request made under Clause 13.6 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) The Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 13.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 3. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.9 The Supplier shall allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- 13.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 13.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 13.12 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

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

13.16 This clause 13 shall apply during the Term and indefinitely after its expiry.

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 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.

1. Background

- 1.1. There is a global push to conserve the marine environment through marine protected areas (MPAs). In the UK, over 350 MPAs have been established, which occupy approximately 25% of UK territorial waters. This MPA network, includes a variety of areas by which conservation and government bodies protect the marine environment, while also enabling its sustainable use (including marine conservation zones (MCZs), special areas of conservation (SACs), special protection areas (SPAs), and Ramsar sites). Each UK MPA has specific conservation objectives associated with it, which describe the current and desired state of the designated features afforded protection through the site. This is used to guide where and what management is required to facilitate a move towards favourable state of all protected habitats and species. Within English waters, the Marine Management Organisation (MMO) is responsible for the implementation of management measures from 6-200nm or the median line, to ensure all activities are compatible with the conservation objectives of MPAs. Where activities are not compatible with an MPA's conservation objectives, they are reviewed, and management measures in the form of byelaws are implemented to limit adverse effects on sensitive designated features. There is an ambition that the management process secures positive ecological outcomes as well as minimising socio-economic impacts and where possible produces positive social and economic impacts.

2. Objectives

- 2.1. The project's objective is to:
- Design an evaluation framework to review processes used by the MMO when producing and implementing marine conservation management measures and subsequent output impacts to examine if they are achieving the collective positive improvement expected from MPA implementation. Furthermore, identify indicators to illustrate what effectiveness and success would look like based on the ambitions set out in the MMO Story for marine conservation. The framework will be implemented over a three-year period to evaluate the whole scope of work.
- 2.2. The evaluation framework should support:

- The identification of a comprehensive and effective evaluation process that tracks the processes used and impacts in terms of contributing to aims of the MPA network, meeting legal and policy requirements, addressing climate change, building resilience, achieving restoration, and producing positive social and economic outputs.
- The assessment and deeper understanding of the initial negative and positive outcomes of conservation management measures as the programme proceeds to inform recommendations on how these can be minimised/maximised going forward.
- The exploration into whether development processes used were widely agreed to be fair, accessible, transparent, and legitimate and if not, put forward recommendations for change.
- The exploration into whether processes currently used optimise ecological, social and economic outcomes and if so/not, why and what changes are required?
- The provision of recommendations on how to communicate the outputs of the evaluation most effectively to different audiences to highlight the changes the MMO will be implementing as a consequence of what they have learned?

3. Approach

- 3.1. Tenderers are invited to propose specific methods and make use of innovative/quasi-experimental approaches where appropriate in addressing this brief, detailing how these methods will meet the research aims.
- 3.2. From early scoping for the evaluation, the authority anticipates that the work would use a developmental evaluation (DE) approach and the most suitable methods will be identified and applied to provide a comprehensive understanding of the full suite of ecological, social, and economic changes resulting from management intervention. This is due to the Authority's requirement for the evaluation to generate rapid feedback and support continuous development in the implementation of conservation management. DE is one of only a few approaches that recommends mid-programme changes rather than simple post-programme assessments and is reliant on evaluators working closely with programme leads. Developmental evaluation also implies that the evaluation approach will evolve over time, as the surrounding context changes. Given the role of the evaluation in supporting the delivery of the programme, the Authority considers a DE approach would be most suitable in this instance.
- 3.3. While the Authority has suggested advancing a developmental approach to evaluation, tenderers are also invited to propose alternate methods which they consider appropriate to meet the aims and objectives of evaluation for the intervention. If proposing an alternative approach, tenderers are requested to explain how their chosen approach will also meet the aims and objectives.

- 3.4. The framework is also expected to be designed in a manner which enables and encourages feedback to be gathered from a wide range of stakeholders. It is expected that a number of case studies will be identified, through which the evaluation process can then be set against. It would be expected to include a theory of change, data collection plan and evaluate policy, delivery, and stakeholders at a minimum.
- 3.5. The Authority suggests the monitoring and evaluation framework be developed in collaboration with the MMO and a stakeholder Working Group. Tenderers should demonstrate how they intend to develop an evaluation framework and gather input across Defra, arm's length bodies, and the heterogeneous stakeholder groups and provide a draft framework to coincide with the timeframes set out below.
- 3.6. Tenderers should justify the specific methods and analyses chosen and should set out an appropriate sampling framework where applicable. Within this, tenderers should give consideration to ethical and data protection requirements and processes. It is expected that only qualitative approaches will be proposed due to the importance of capturing the *individual* voices of those involved in and affected by the development and implementation of management measures and the timescale required to complete this work.
- 3.7. In complement to the proposed evaluation approach, the Authority would also consider the proposing of a participatory evaluation (PE) approach to align with the desire to involve stakeholders in fund design and delivery. The research should be compliant with guidelines set out in HM Treasury's Green and Magenta Books, and mindful if and where appropriate, of the Complexity Evaluation Framework developed for Defra evaluations.

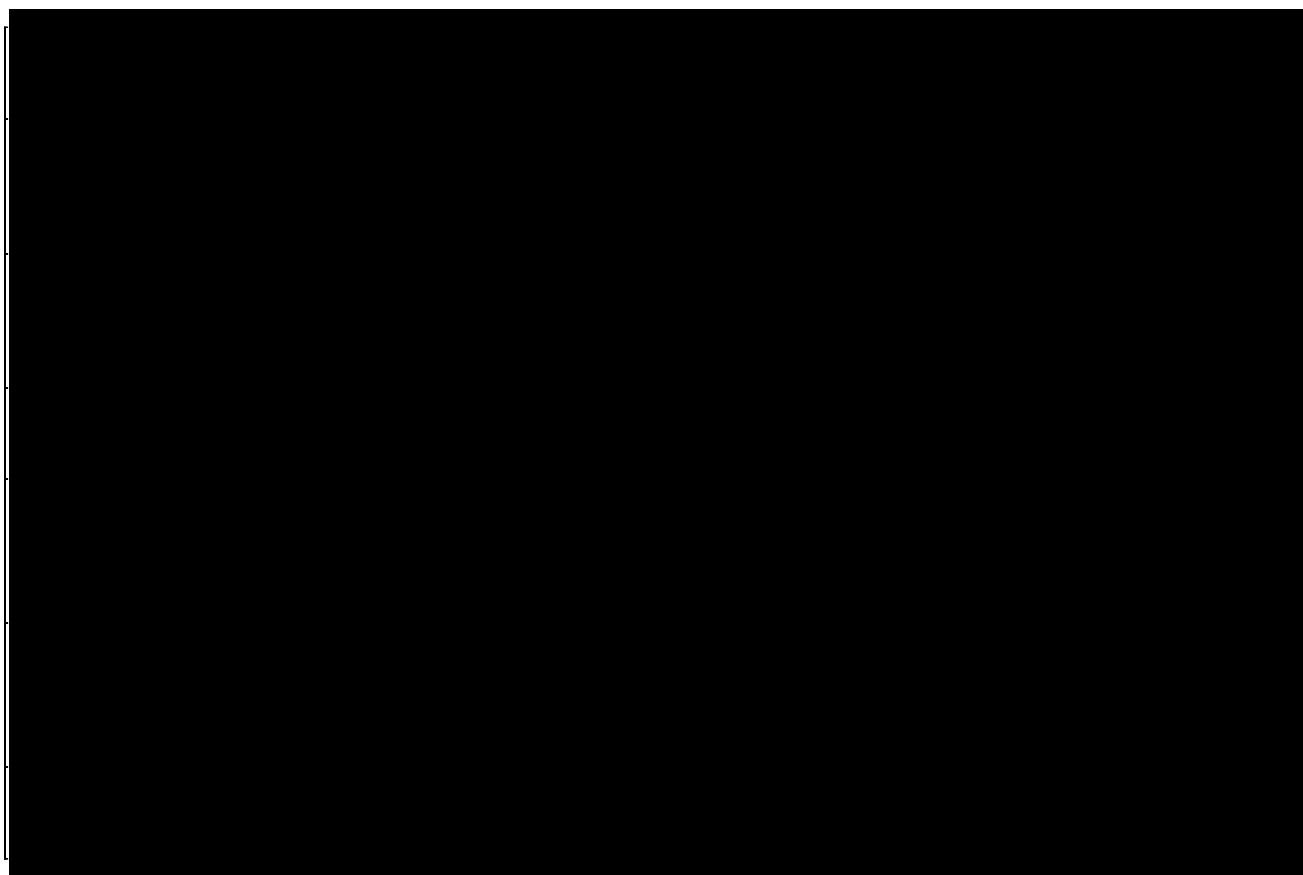
4. Required Expertise

- 4.1. Applicants should have experience of developing and implementing monitoring and evaluation frameworks. It is preferable that they hold a track record of using different evaluation techniques including a developmental approach. Previous experience of working within the marine environment and fisheries sector is desirable, but applications are welcome from organisations without such experience where proposals include involvement of external expert(s) to give sector specific advice.
- 4.2. Considering the scope of the work and the delivery timeframes, effective project management experience will be required. It is expected that applicants will set out how the evaluation process will be managed. Quality assurance will be achieved through internal processes, but also by the provision of peer review of the draft evaluation framework by a steering group established by the MMO. This steering

group is expected to meet monthly and regular catchups (at least fortnightly) will take place with the MMO project manager.

5. Proposed timeline

- 5.1. 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. The Authority expects fortnightly, minuted meetings to review progress, direction, and risks.



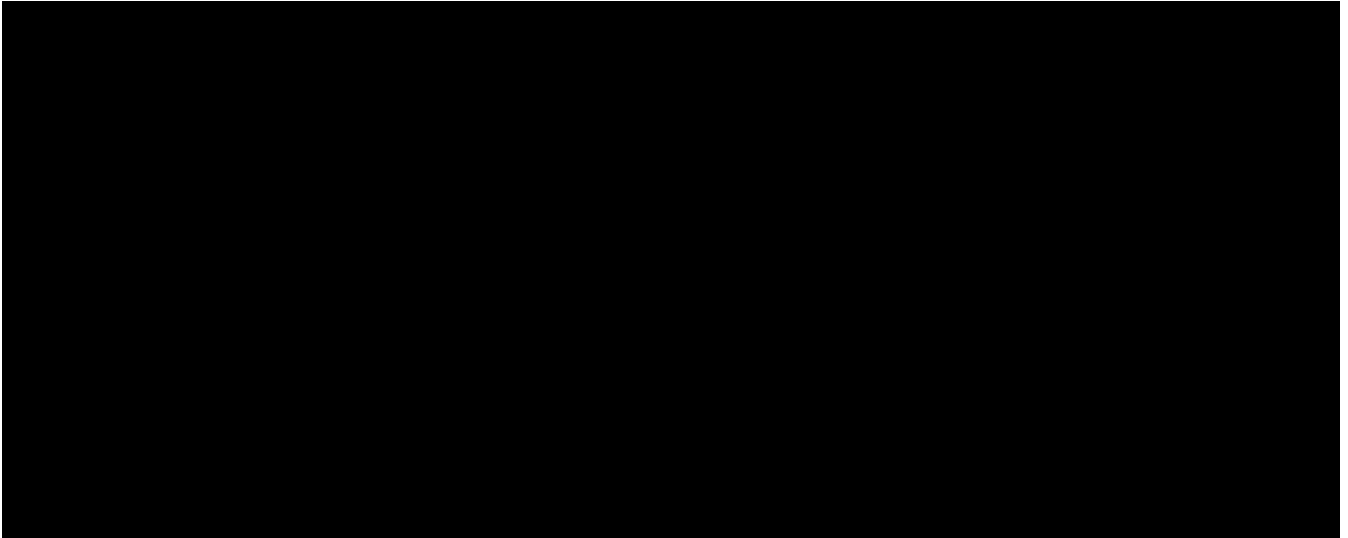
¹ The Authority will consider bids from those who will be able to undertake deliverables 1- 4 by **Thursday 31st March 2022**, this will include payment up to and including milestone 3 subject to satisfactory evidence of completion. The final deliverables 5-6 will need to then be completed and agreed by **Tuesday 31st May 2022**.

² For avoidance of doubt, completion of **deliverables 1-4** will conclude all required fieldwork and analysis required to deliver the report. Final payment will be issued on completion of **deliverable 6**, the final report.

- 5.1. The Authority will review the final draft report in MSWord to MMO 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.

6. Payment Methods

- 6.1. Payment will be following satisfactory quality assurance of the below agreed outputs/deliverables and sign-off from the Future Funding team.



7. Quality Assurance/General Data Protection Regulation

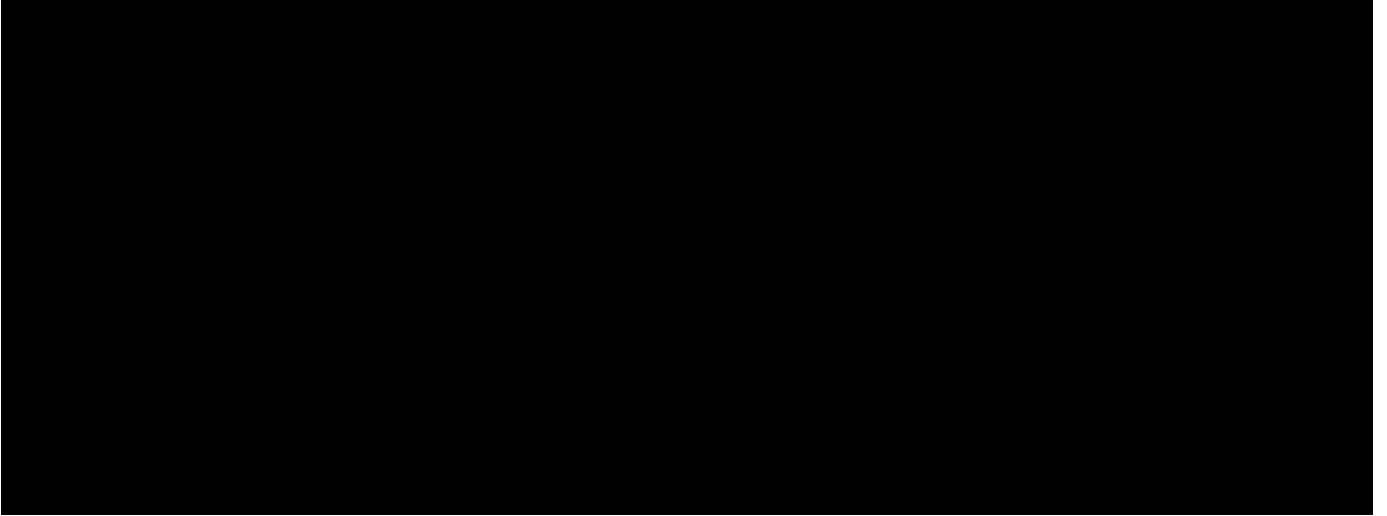
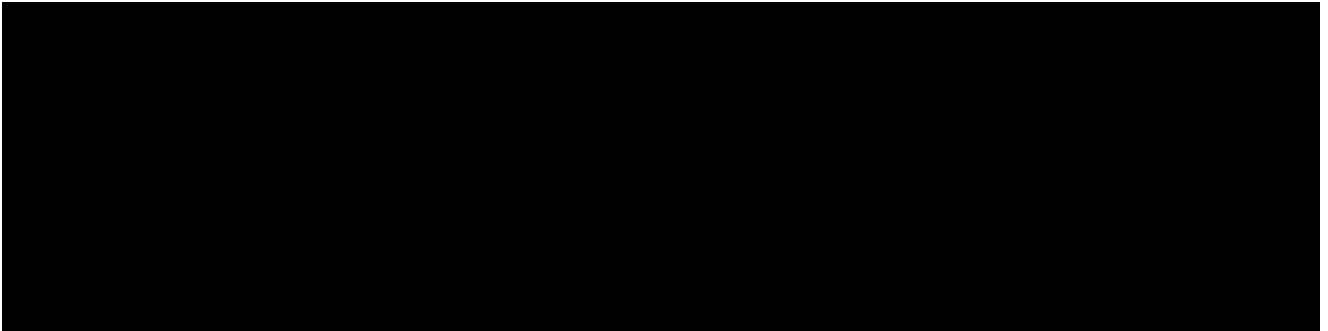
- 7.1. It is essential that any evidence used in preparing the final report has been collected, processed, and published with rigour and that appropriate quality assurance (QA) and General Data Protection Regulation (GDPR) processes are in place, and embedded, within the contracting organisation. The Contractor will provide the MMO with relevant assurances around these procedures within their bid. Please refer to the MMO's Quality Assurance of Evidence processes for guidance as to what the MMO will be looking for.

(<http://webarchive.nationalarchives.gov.uk/20140305093254/http://www.marinemanagement.org.uk/evidence/documents/qa-evidenceprocess.pdf>)

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 bid being deemed non-compliant.

SCHEDULE 2 PRICES

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