



**European Union**  
European Regional  
Development Fund

**Herefordshire**  
Wildlife Trust 

**Herefordshire Wildlife Trust**

**Delivering the Nutrient Management Plan**

**‘Design and delivery of island re-profiling works at  
Bodenham Lake Nature Reserve’**

**Contract Agreement**



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3. SCHEDULE 1 DESIGN SUBMISSION PROCEDURE



# 1 AGREEMENT

This Agreement is made the \_\_\_\_\_ 20 \_\_\_\_\_

## The Employer

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Company No. \_\_\_\_\_ Charity No. \_\_\_\_\_

Whose Registered office is at

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## The Contractor

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Company No \_\_\_\_\_

Whose registered offices is at

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## 1.1 RECITALS

### Whereas

**First**                    **the employer wishes to have the following design and construction of the following work carried out**

\_\_\_\_\_

\_\_\_\_\_

At \_\_\_\_\_  
\_\_\_\_\_ (the works)

and the employer has supplied to the Contractor documents showing and describing or otherwise stating his requirements (the Employer's Requirements')

**Second**                In response to the Employers Requirements the Contractor has supplied to the Employer:

- i) Documents showing and describing the Contractor's proposals for the design and construction of the Works ('the Contractors Proposals'); and
- ii) An analysis of the Contract Price (the Contract Price Analysis');

**Third**                    the Employer has examined the Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements

**Fourth**                for the purposes of the Construction Industry Scheme under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars

**Fifth**                    The division of the Works into Sections is shown in the Employer's Requirements or in such other documents as are identified in the Contract Particulars



## 1.2 ARTICLES

**Now it is hereby agreed as follows**

### **Article 1: Contractors obligations**

The contractor shall complete the design for the Works and carry out and complete the construction of the Works in accordance with the Contract Documents.

### **Article 2: Contract Price**

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions the VAT-inclusive sum of

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(£ \_\_\_\_\_) (the Contract Price)

### **Article 3: Employer's Requirements and Contractors Proposals**

The Employer's Requirements, the contractors Proposals and the Contract Price Analysis are those referred to in the Contract Particulars.

### **Article 4: Principle Designer**

The Principle Designer for the purposes of the CDM Regulations is the Contractor and the named individual is:

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### **Article 5: Principle Contractor**

The Principle Contractor for the purposes of the CDM Regulations is the Contractor and the named individual is:

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**Article 6: Dispute Resolution**

If any dispute or difference arises under this Contract, either Party may refer it to mediation in accordance with Clauses 2.28.1 to 2.28.3

**1.3 CONTRACT PARTICULARS**

Clause etc	Subject	
Fourth Recital	Construction Industry Scheme	Employer at the Base Date is not a contractor for the purposes of the CIS
Article 3	Employer Requirements	To deliver works in accordance with documents: DNMP Tender Documents; <ul style="list-style-type: none"> <li>• Annex 1 DNMP Islands Business Case;</li> <li>• Annex 2 DNMP Islands Selection and Award Criteria;</li> <li>• Annex 3 DNMP Islands Specification;</li> <li>• Annex 4 DNMP Islands Risk Register and Mitigation;</li> <li>• Appendix 1 Planning permission;</li> <li>• Appendix 2 Bodenham Lake site based risk assessment;</li> <li>• Appendix 3 Bodenham Lake Island Re-profiling Ecological Assessment;</li> <li>• Appendix 4 Bodenham Lake Island Block Plans;</li> <li>• Appendix 5 Bodenham Lake Bank Re-Profiling Method of Work and Environmental Risk Assessment;</li> <li>• Appendix 6 Bodenham Lake hydrographical data;</li> </ul>
Article 3	Contractors Proposals	Refer to Contractor’s Tender documents xxx
Article 3	Contract Price Analysis	Refer to Contractors Tender documents xxx
Article 6 Clause 2.28	Dispute Resolution	The mediator will be nominated by Centre for Effective Dispute Resolution
2.7, 2.11	Contract period	DD/MM/YYYY to dd/mm/yyyy
2.10	Work Section Dates for Completion	Design_____
		Re-Profiling_____



		Gravel spreading _____
2.1.19	Addresses for service of Notices by the Parties	Employer: _____ _____ _____ Contractor: _____ _____ _____
2.5.6	Date of the Possession of the site	
2.12	Liquidated Damages	A fixed sum of: Twenty Four Thousand Pounds  (£24,000)
2.3.2	Rectification Period	12 months from the date of significant completion of the Works
2.20	Method of Payment: Stage Payments	As set out in documents: DNMP Business Case  Stage Payment Values: 1) £ 2) £ 3) £ 4) £ 5) £ (3% of total contract)



2.17	<p>Contractor's Public Liability Insurance: injury to persons or property – the required level of cover is not less than:</p> <p>Contractor's Employers' Liability Insurance – the required level is not less than:</p> <p>Contractor's Professional Indemnity Insurance – the required level is not less than:</p>	<p>£xx for any one occurrence or series of occurrences arising out of one event</p> <p>£xx For any one occurrence or series of occurrences arising out of one event</p> <p>£xx For any one occurrence or series or occurrences arising out of one event</p>
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### 1.4 ATTESTATION

the hands of their Parties or their duly authorised representatives

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Signed by or on behalf of the Employer \_\_\_\_\_

in the presence of: \_\_\_\_\_ Witness's Signature

\_\_\_\_\_ Witness's name

\_\_\_\_\_ witness's address

\_\_\_\_\_

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Signed by or on behalf of the Contractor \_\_\_\_\_

In the presence of: \_\_\_\_\_ witness's signature

\_\_\_\_\_ witness' name

\_\_\_\_\_ witness' address

\_\_\_\_\_

## 2 CONDITIONS OF CONTRACT

### 2.1 DEFINITIONS

Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meaning stated or referred to below

**2.30.1 Article**

An article in the Agreement

**2.30.2 CDM Regulations**

The Construction (Design and Management) Regulations 2015

**2.30.3 Change**

see clause 2.9

**2.30.4 Completion Date**

the date for Completion of the Works or of a Section as stated in the contractor Particulars or such other date as is fixed by a Pre-agreed Adjustment

**2.30.5 Conditions**

the clauses set out in these Conditions, together with and including the Schedule hereto

**2.30.6 The Contract Documents**

the Agreement and these Conditions, together with the Employer's Requirements, the Contractor's Proposals and the Contract Price Analysis

**2.30.7 The Contract Particulars**

the particulars in the Agreement and there described as such, including the entries made by the Parties

**2.30.8 Contract Price**

The price stated in Article 2

**2.30.9 Contract Price Analysis**

see the Second Recital and the Contract Particulars

**2.30.10 Contractor**

the person named as Contractor in the Agreement

**2.30.11 Contractor's Design Documents**

the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the contractor in relation to the design of the Works (including such as are contained in the Contractor's Proposals)

**2.30.12 Contractors Proposals**

see the second recital and the Contract Particulars

**2.30.13 Date for Completion**

the date stated as such in the Contract Particulars in relation to the Works or a Section

**2.30.14 Date of Possession**



the date stated as such in the Contract Particulars in relation to the Works or a Section

**2.30.15 Design Submission Procedure**

the procedure set out in Schedule 1, subject to any modifications of that procedure specified in the Contract Documents

**2.30.16 Employer**

the person named as Employer in the Agreement

**2.30.17 Employer's Requirements**

see the First Recital and the Contract Particulars

**2.30.18 Non-Completion Notice**

see clause 2.10.2

**2.30.19 Notice**

any written instruction or notice given to the Contractor by the Employer or to the Employer by the Contractor

**2.30.20 Parties**

the Employer and the Contractor together

**2.30.21 Party**

either the Employer or the Contractor

**2.30.22 Significant completion Statement**

see clause 2.10.1

**2.30.23 Principal Contractor**

the Contractor or other person named in Article 5

**2.30.24 Principal Designer**

the Contractor or other person named in Article 4

**2.30.25 Recitals**

the recitals in the Agreement

**2.30.26 Retention**

the proportion or sum that the Employer may deduct and retain

**2.30.27 Retention Percentage**

the percentage stated in the Contract Particulars

**2.30.28 Sections**

the Sections into which the Works have been divided as referred to in the fifth recital and the Contract Particulars

**2.30.29 Site Materials**

all unfixated materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein

**2.30.30 Statutory Requirements**

any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Contract and any regulation or by-law of any local authority or Statutory Undertaker which has any jurisdiction with regard to the Works or with those systems the Works are, or are to be, connected.

**2.30.31 Valuation**



a valuation in accordance with the Valuation Rules, pursuant to clause 2.9.2

**2.30.32 Works**

the Works briefly described in the first recital, as more particularly shown, described or referred to in the Contract Documents, including any changes made to those works in accordance with this Contract

## **2.2 INTERPRETATION**

- 2.2.1 Except as set out above, the Contract shall be interpreted in accordance with the Interpretation Act 1988.
- 2.2.2 Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause or schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule
- 2.2.3 The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Contract Document or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.
- 2.2.4 The headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Contract
- 2.2.5 A gender includes any other gender
- 2.2.6 A reference to a 'person' includes any individual, firm, partnership, company and any other body corporate
- 2.2.7 Any reference in these Conditions to a statutory provision will include all subsequent modifications to that statutory provision.
- 2.2.8 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Oxford English Dictionary

## **2.3 EMPLOYERS INSTRUCTIONS**

- 2.3.1 The Contractor shall forthwith comply with all instructions issued to him by the Employer on any matter on which these Conditions expressly empower the Employer to issue instructions, save that:



- 1 Where an instruction requires a Change of the type referred to in clause 2.9, the Contractor need not comply to the extent that he notifies a reasonable objection to it to the Employer
- 2 The Employer may issue instructions requiring a Change provided that the Employer may not effect a Change which is, or which makes necessary, an alteration or modification in the design of the Works without the Contractor's consent
- 3 Any instruction of the type referred to in clause 2.9.1(2) shall be subject to the Contractor's right of reasonable objection.

2.3.2 Subject to the requirements of the preceding paragraph, the Contractor undertakes the following:

- 1 Any deficiency or other errors, due to design, materials or workmanship not in accordance with this Contract, which may appear within 12 months following the completion of the Works, shall within a reasonable time after delivery of the Employer's written instruction be amended by the Contractor and, unless otherwise agreed upon by both parties, at the Contractor's own cost; provided that any damage after completion shall not be required to make good at the Contractor's cost, unless it is agreed that the said damage is owing to injury which took place before completion.
- 2 The Contractor shall only be responsible for damages sustained by the Employer under conditions of normal use and service in terms of the preceding paragraph, and the Contractor shall, under no circumstances, be responsible for loss or damage caused by general wear and tear, misappropriation, neglect, negligence, mistreatment or accident.

## **2.4 EMPLOYERS REQUIREMENTS**

- 2.4.1 The Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.
- 2.4.2 If an inadequacy is found in any design in the Employer's Requirements then if or to the extent that the inadequacy is not dealt with in the Contractor's Proposals, the Employer's Requirements shall be corrected, altered or modified accordingly. Any correction, alteration or modification under this clause shall be treated as a Change.



## 2.5 CARRYING OUT THE WORKS

- 2.5.1 The Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with the Contract Documents and Statutory Requirements and for that purpose shall complete the design for the Works including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the construction of the Works so far as not described or stated in the Employer's Requirements or Contractor's Proposals.
- 2.5.2 The Contractor's obligation to the Employer to comply with the Statutory Requirements under clause 2.5.1 shall not apply to the extent that the relevant part or parts of the Employer's Requirements state specifically that the Employer's Requirements comply with the Statutory Requirements.
- 2.5.3 The Contractor shall pass to the Employer all approvals received by the Contractor in connection with the Statutory Requirements.
- 2.5.4 The Contractor shall comply with any reasonable instruction and be bound by any decision of the Employer issued or made pursuant to these Conditions and any such instruction or decision shall have effect except to the extent that it is varied by the Employer or under dispute resolution procedures of this Contract.
- 2.5.5 **Material Goods and Workmanship:** All materials, goods and workmanship for the works shall, so far as procurable, be of the kinds and standards described in the Employer Requirements or, if not there specifically described, as described in the Contractor's Proposals or other Contract Design Documents.
- 2.5.6 On the possession of the site the Contractor will begin construction of the Works and regularly and diligently proceed with and complete the same on or before the relevant Completion Date.
- 2.5.7 For Works insurance purposes the contractor shall retain possession of the site and the Works up to and including the date of issue of the Significant completion Statement
- 2.5.8 If the Contractor becomes aware of any inadequacy as is referred to in 2.4.2 or any other discrepancy or divergence in or between any of the following, namely:
- 1 the Employer's Requirements;
  - 2 the Contractor's Proposals and other Contractor's Design Documents; and
  - 3 any instruction issued by the Employer under these Conditions;
- He shall immediately give notice with appropriate details to the Employer, who shall issue instructions in that regard.



- 2.5.9 Where the discrepancy or divergence to be notified under 2.5.8 is within or between the Contractor's Proposals and/or other Contractor's Design Documents, the Contractor shall notify the Employer of his proposed amendment to remove it and the Employer may accept the Contractor's proposed amendment; the Contractor shall be obliged to comply with the decision or acceptance by the Employer without cost to the Employer.
- 2.5.10 Where the discrepancy is within the Employer's Requirements the Contractor's Proposals shall prevail without any adjustment of the Contract Price. Where the Contractor's Proposals do not deal with the discrepancy, the Contractor shall notify the Employer of his proposed amendment to deal with it and the Employer shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the contractor and treated as a Change.
- 2.5.11 CDM Regulations: Each Party undertakes to the other that in relation to the Works and site he will duly comply with applicable CDM Regulations. In particular, but without limitation:
- 1 where the Contractor is and while he remains the Principle Designer, he shall comply with the duties of a Principle Designer and shall without charge prepare, and deliver to the Employer, the health and safety file.
- 2.5.12 The Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before significant completion of Works or relevant section and without further charge to the Employer, supply for retention and use by the Employer such Contractor's Design Documents and related information as is specified in the Contract Documents or as the Employer may reasonably require that show or describe the Works as built or relate to the maintenance and operation of them or their installations.
- 2.5.13 The Contractor shall supply the Contractor's Design Documents in accordance with 1 (Design Submission Procedure).

## **2.6 ASSIGNMENT**

- 2.6.1 Subject to Clause 2.6.2, neither the Employer nor the Contractor shall without consent of the other assign this Contract or any right thereunder.
- 2.6.2 Where clause 2.6.2 is stated in the Contract Particulars to apply, then, in the event of transfer by the Employer of his freehold or leasehold interest in, or of a grant by the Employer of a leasehold in, the whole of the premises comprising the Works or (if the Contract Particulars so state) any Section, the Employer may at any time after significant completion of the Works or of the relevant Section grant or assign to any



such transferee or lessee the right to bring proceedings in the name of the Employer (whether by arbitration or litigation, whichever applies under this Contract) to enforce any terms of this Contract made for the benefit of the Employer. The assignee shall be stopped from disrupting any enforceable agreements reached between the Employer and the Contractor which arise out of and relates to this Contract (whether or not they are or appear to be a derogation from the right assigned) and which are made prior to the date of any grant or assignment.

## **2.7 CONTRACT PERIOD**

The Contractor shall deliver the Works within the period as stated in the Contract Particulars and Contact Documents, subject to any changes arising from clause 2.9 (Changes) and/or clause 2.11 (Extensions).

## **2.8 MATERIALS**

- 2.8.1 The Contractor shall possess any unfixed materials that are delivered to the Site and required for the construction of the Works under this Contract, the said materials will remain the property of the Contractor until payment by the Employer is complete. Additionally, any unfixed excess materials remain the property of the Contractor.
- 2.8.2 If any of the materials agreed upon and detailed in the said Specification are, unavailable, in short supply or undeliverable in accordance with the Works deadlines, then the Employer shall be responsible for choosing substitute materials of a similar quality from an array of comparable materials which the Contractor deems readily procurable.

## **2.9 CHANGES<sup>i</sup>**

- 2.9.1 The term 'Change' means

A change in the Employer's Requirements which makes necessary the alteration or modification of the design, quality or quantity of the Works, otherwise than such as may be reasonably necessary for the purposes of rectification, including:

- 1 the addition, omission or substitution of any work
- 2 the alteration of the kind or standard of the materials or goods to be used in the Works
- 3 the removal from the site of any work executed or Site Material other than work, material or goods which are not in accordance with this Contract





The imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed in the Employer's Requirements in regard to:

- 1 access to the site or use of any specific parts of the site;
- 2 limitations of working space
- 3 limitation of working hours or
- 4 the execution or completion of the work in any specific order

### **Valuation of Changes and provisional sum work**

2.9.2 The value of:

- 1 all Changes required by Employer's Instructions;
- 2 all work which under these Conditions is to be treated as a Change; and
- 3 all work executed by the Contractor in accordance with Employer's Instructions as to the expenditure of Provisional Sums included in the Employer's Requirements

shall be such amount as is agreed by the Employer and the Contractor or, where not agreed, the amount valued (a Valuation') in accordance with clauses 2.9.4 ('the Valuation Rules')

2.9.3 Allowances shall be made in such Valuations for the addition or omission of the relevant design work

2.9.4 The valuation of substitute work shall be consistent with the values of work of a similar character set out in the Contract Price Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the Contract Price Analysis a fair valuation shall be made

2.9.5 The valuation of the omission of work set out in the Contract Price Analysis shall be in accordance with values therein for such work

2.9.6 Any valuation of work under clauses 2.9.4 and 2.9.5 shall include allowance for any necessary addition to or reduction of the provision of site administration

### **2.10 SIGNIFICANT COMPLETION**

2.10.1 When Significant completion of the Works or a Section is achieved and the Contractor has complied sufficiently with the Employers Requirements then the Employer will issue a statement to that effect (a Completion Notice).

2.10.2 If the Contractor fails to complete the Works or a Section by the relevant Completion Date, the Employer shall issue a notice to that effect (a Non-Completion Notice). If a new Completion Date is fixed after the issue of such a notice, such fixing cancel that notice and the Employer shall where necessary issue a further notice.



## **2.11 EXTENSIONS**

- 2.11.1 If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give notice to the Employer, within five working days after becoming aware that such delay was likely to occur, of the material circumstances, including cause or causes of the delay and expected effects, including an estimate of the duration of delay.
- 2.11.2 If the Works completion is delayed as a result of unforeseen circumstances, including but not restricted to any shortages or deficiencies in materials, strike action, lock out, political or civil disturbance or riots, exceptionally extreme weather or any adaptation, act or oversight on the part of the Employer or any other reason outside of the Contractor's jurisdiction, then the Employer, if satisfied that this Condition applies, may grant to the contractor a rational and reasonable extension to the original Completion Dates.
- 2.11.3 In the event that the Contractor is unable to complete the Works, provided that the Contractor is not in contravention with his obligations in terms of this Contract Agreement, the Employer shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.
- 2.11.4 The Employer may not provide an extension of time where in the opinion of the Employer the Contractor has failed to use best endeavours to avoid or reduce the cause and/or effects of a delay.

## **2.12. LIQUIDATED DAMAGES**

- 2.12.1. If the Contractor fails to complete the Works or a Section by the relevant Completion Date, then the Contractor shall reduce the cost of delivery by the amount specified within the Contract Particulars as liquidated damages, resulting from loss of funding and increased costs to the Employer and any such damages will be deducted from the monies due to the Contractor by the Employer provided:
- 1 the Employer has issued a Non-Completion Notice (clause 2.10.2) for the works or a section; and
  - 2 the Employer has notified the Contractor before the due date for the final payment that he may require payment of, or may withhold or deduct, liquidated damages,

the Employer may, not later than 5 days before the final date for payment of the amount payable, give notice to the Contractor in the terms set out in 2.12.2(2)



2.12.2. A notice from the Employer under clause 2.12.1(1) shall state that for the period between the Completion Date and the date of significant completion of the Works that Section;

or

- 1 he requires the Contractor to pay liquidated damages at the rate stated in the Contract Particulars, or a lesser rate stated in the notice, in which event the Employer may recover the same as a debt: and/or
- 2 that he will withhold or deduct liquidated damages at the rate stated in the Contract Particulars, or at such lesser stated rate, from sums due to the Contractor

## **2.13 TERMINATION**

### **Default by the Contractor**

2.13.1 If before significant completion of the Works, the Contractor:

- 1 Without reasonable cause wholly or substantially suspends the carrying out of the Works; or
- 2 fails to proceed regularly and diligently with the performance of his obligations under this Contract; or
- 3 refuses or neglects to comply with a notice or instruction from the Employer requiring him to remove any work, materials or goods not in accordance with this Contract and by such refusal or neglect the Works are materially affected

the Employer may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).

2.13.2 If the Contractor continues a specified default for 14 days from receipt of the notice under clause 2.13.1 the Employer may on, or within 21 days from the expiry date of that 14 day period by a further notice to the Contractor terminate the Contractor's employment under this Contract.

2.13.3 If the Employer does not give the further notice referred to in clause 2.13.2 (whether as a result of the ending of and specified default or otherwise) but the Contractor repeats a specified default, then, upon or within a reasonable time after such repetition, the Employer may be notice to the Contractor terminate that employment.

### **Insolvency of Contractor**

2.13.4 If the Contractor is Insolvent, the Employer may at any time by notice to the Contractor terminate the Contractor's employment under this Contract



- 2.13.5 As from the date the Contractor becomes insolvent, whether or not the Employer has given notice of termination, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.
- 2.13.6 The Employer may take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Contractors shall allow and shall not hinder or delay the taking of those measures

#### **Default by the Employer**

2.13.7 if the Employer:

- 1 does not pay by the final date for payment the amount due to the Contractor in accordance with the Contract Particulars and/or any VAT properly chargeable on that amount or;
- 2 If after the Date of Possession but before significant completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Contract Particulars by reason of any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, then, unless it is caused by the negligence or default of the Contractor, the Contractor may give to the Employer a notice specifying the event or events (a 'specified' suspension event or events).
- 3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice, the Contractor may on, or within 21 days from the expiry of the 14 day period by a further notice to the Employer terminate the Contractor's employment under this Contract.
- 4 If the Contractor for any reason does not give the further notice referred to in clause preceding clause but (whether previously repeated or not): the Employer repeats a specified default, or a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby, upon or within a reasonable time after such repetition, the Contractor may by notice to the Employer terminate the Contractor's employment under this Contract.

#### **Insolvency of Employer**

- 2.13.8 If the Employer is Insolvent, the Contractor may by notice to the Employer to terminate the Contractor's employment under this Contract.
- 2.13.9 The Employer shall immediately notify the Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to insolvency.



2.13.10 As from the date the Employer becomes insolvent, the Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works shall be suspended.

## **2.14 DETERMINATION**

2.14.1. The Employer reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).

2.14.2 The Employer will pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

2.14.3 The Employer will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Employer has validated to its satisfaction. The Employer's total liability under this Clause shall not exceed the Contract Price that would have been payable for the Services if the Contract had not been determined.

## **2.15 INDEMNITY**

2.15.1 Contractor's liability – personal injury or death. The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker

2.15.2 Contractor's liability – loss, injury or damage to property. The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person

2.15.3 Contractor's liability – professional indemnity. The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person or any loss, injury or damage whatsoever to any property real or personal arising out of the design or execution of the works in so far as such loss, injury or damage



arises out of or in the course of or by reason of defective or faulty design of the Works

## **2.16 LIMIT OF CONTRACTOR'S LIABILITY**

The limit of the Contractor's liability for each and every claim by the Employer, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any sort shall be the sum stated in the Contract Particulars or ten million pounds whichever is the greater.

## **2.17 INSURANCE**

- 2.17.1 The Contractor shall insure and maintain insurance, in accordance with the Contract Particulars and against liabilities under Condition 14 (Indemnity) in the manner and to the value of £10M (ten million pounds).
- 2.17.2 The Contractor shall at the request of the Employer supply such documentary evidence as the other Employer may reasonably require that the policy or cover has been effected and remains in force.

## **2.18 PREVENTION OF FRAUD AND CORRUPTION**

- 2.18.1 The Contractor shall not offer, give, or agree to give anything, to any person as an inducement or reward for doing, refraining from doing, or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 2.18.2 The Contractor shall take all reasonable steps, to prevent fraud by the Contractor's staff in connection with the Contract and shall notify the Employer immediately if it has reason to suspect that fraud has occurred.
- 2.18.3 If the Contractor or the Contractor's staff engages in conduct prohibited by clause 2.18 or commits fraud in relation to the Contract or any other contract the Employer may:
  - 1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Employer resulting from the termination, including the cost reasonably incurred by the Employer of making to deliver the Works and any additional expenditure incurred by the Employer throughout the remainder of the Contract; or



- 2 recover in full from the Contractor any other loss sustained by the Employer as a consequence of any breach of this clause.

2.18.4 The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Bribery Act 2010 (as amended), in any of its dealings with the Employer.

## **2.19 MONITORING AND AUDIT**

The Employer shall inspect and examine the Works being undertaken and the Contractor shall give all such facilities as the Employer may reasonably require for such inspection and examination.

## **2.20 INVOICING AND PAYMENT**

2.20.1 Payment will be in accordance with the Contract Price and the Contract Particulars and:

- 1 the Contractor will submit invoices only for work that has been satisfactorily completed and following necessary inspections of work by the Employer and/or submission of such information necessary to demonstrate that the Contractor is entitled to payment.
- 2 On receipt of the invoice the Employer will pay the full amount within 30 days.
- 3 If any sum is payable under the Contract by the Contractor to the Employer, it will be deducted from the next available invoice.
- 4 If the Employer fails to pay a sum payable to the Contractor by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the Employer of his intention to suspend the performance of his obligations under this Contract and the grounds for such suspension, the Contractor, without affecting his other rights and remedies, may suspend performance of any or all his obligations until payment is made in full.

## **2.21 WARRANTY**

The Contractor warrants that the Services supplied by him will be discharged with reasonable skill, care and diligence and will be fit for the Employer's intended purpose so far as this has been communicated to him, or which he would reasonably be expected to know.

## **2.22 STATUTORY REQUIREMENTS**

2.22.1 The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract.



- 2.22.2 If the Contractor or Employer become aware of a divergence between the Statutory Requirements and
- 1 the Employer's Requirements (including any Change); or
  - 2 the Contractors Proposals or other Contractor's Design Documents,

he shall immediately give the other notice specifying the divergence and the Contractor shall notify the Employer of his proposed amendment for removing it. With the Employers consent the Contractor shall complete the design and construction of the Works in accordance with the amendment and the Employer shall note the amendment on the Contract Documents.

- 2.22.3 Where the divergence is within the Employer's Requirements the Contractor's Proposals shall prevail without any adjustment of the Contract Price. Where the Contractors Proposals do not deal with the divergence, the Contractor shall notify the Employer of his proposed amendment to deal with it and the Employer shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the contractor and treated as a Change.

## **2.23 SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL CONSIDERATIONS**

- 2.23.1 The Contractor shall in all his operations, including purchase of materials goods and services, suggest economically viable amendments to the Works, which, if instructed as a Change, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.

- 2.23.2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

## **2.24 PUBLICITY**

The Contractor shall not publicly announce or advertise the Works that he is undertaking under this Contract without prior permission from the Employer.

## **2.25 LAW**

This Agreement is governed by and shall be construed in accordance with the laws of England.

## **2.26 WAIVER**



In no event shall any delay, neglect or forbearance on the part of any party in enforcing (in whole or in part) any provision of this Agreement be or be deemed to be a waiver thereof or a waiver of any other provision or shall in any way prejudice the right of that party under this Agreement.

## **2.27 ENFORCEABILITY**

If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavour in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

## **2.28 DISPUTE RESOLUTION**

- 2.28.1 If a dispute arises and the Parties are unable to resolve the dispute within a period of 15 days, the dispute shall be referred at the instance of either Party to the Parties' respective senior managers or directors.
- 2.28.2 If the parties' respective senior managers or directors are unable to resolve the dispute within 15 days of either party having given notice to the other party that a dispute has arisen then the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 working days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ('ADR Notice') to the other Party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 2.28.3 If there is any point on the logistical arrangements of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 14 working days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them. Unless otherwise agreed, the mediation will start not later than 28 working days after the date of the ADR Notice. No party may commence any court proceedings/arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation



has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## **2.29 FREEDOM OF INFORMATION ACT**

All information submitted to us may need to be disclosed by us in response to a request under the Act or the Regulations. If you consider that any of the information included in your tender, or any other information that you have submitted or is otherwise in the Agreement, is commercially sensitive, please identify it and explain what harm may result from disclosure if a request is received. Even where you have indicated that information is commercially sensitive, we may be required to disclose it under the Act if a request is received. Please also note that any material we receive marked 'confidential' or equivalent should not be taken to mean that we accept any duty of confidence by virtue of that marking.

## **2.30 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS AND INTERESTS**

All patentable and unpatentable inventions, discoveries, ideas, source code, materials, and other intellectual property which are developed under the terms of this Contract shall be deemed to be works made for hire, and shall belong exclusively to Herefordshire Wildlife Trust, and Herefordshire Wildlife Trust shall be the sole owner of all copyrights, patents, inventions, discoveries and trade secrets in the same, including the right to change, edit, and distribute same throughout the world.



### **3 SCHEDULE 1 DESIGN SUBMISSION PROCEDURE**

- 1** The Contractor shall prepare and submit each of the Contractor's Design Documents to the Employer by means and the format stated in the Employer Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Employer to be incorporated prior to the relevant Contractor's Design Document being used for the carrying out of the Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Employer, the Contractor shall submit 2 copies of each of the Contractor's Design Documents to him.
- 2** Within 14 days from the date of receipt of any Contractor's Design Documents, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Employer shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Employer considers that it is not in accordance with this Contract.
- 3** If the Employer does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
- 4** Where the Employer marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
- 5** When a Contractor's Design Document is returned by the Employer:
  - 1** if it is marked 'A', the Contractor shall carry out works in strict accordance with that document
  - 2** if it is marked 'B' the Contractor may carry out the Works in accordance with that document, provided that the Employer's comments are incorporated into it and an amended copy of it is promptly submitted to the Employer; or
  - 3** if it is marked 'C' the Contractor shall take due account of the Employer's comments on it and shall either forthwith resubmit it to the Employer in amended form for comment in accordance with Paragraph 1 or notify the Employer under Paragraph 7
- 6** The Contractor shall not carry out and work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'
- 7** If the Contractor disagrees with a comment of the Employer and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall within 7 days of receipt of the comment notify the Employer that he considers that compliance with the comment would give rise to Change. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
- 8** Provided always that:



- 1 confirmation or withdrawal of a comment in accordance with Paragraph 7 shall not signify acceptance by the Employer that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Employer's comment would give rise to a Change
- 2 where in relation to a comment by the Employer the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Change; and
- 3 neither compliance with the design submission procedure in the Schedule nor with the Employer's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and Works are in accordance with this Contract

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Changes (or contract modifications) for additional works or services can only be awarded 'directly' (i.e. without prior advertising) if the cumulative conditions set out in Article 31(4)(a) of Directive 2004/18/EC are met. Changes that constitute modifications to the essential conditions of the contract, must be considered equivalent to the conclusion of a new contract, requiring, in principle, a new tender.