

MFF I47 2023-2024

Moorland Restoration Ground Works

(various packages)

Tender Return Date: 5pm Friday 20 October 2023

Invitation to tender for packages of moorland restoration works covering sites in the Peak District and West Pennines.

Package 1 – Holcombe Moor stone dams

Package 2 – Big Moor stone dams

Package 3 – Rivelin works

Prepared by:



Moors for the Future Partnership

2023

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Section I: Contract objectives and detailed conditions

Part A

Background

1. Works Packages 1 and 2 have work periods between 8 Jan and 31 March 2024.
2. Works Package 3 spans two years with work periods between:
November 2023 and 31 March 2024
August 2024 and 30 November 2024
3. The Works Packages are made up of the following Works;
Package 1 – Holcombe Moor stone dams
Package 2 – Big Moor stone dams works
Package 3 – Rivelin works
4. Tenderers may tender for any number of works packages.
5. Works packages may, at the Authority's option, be awarded independently to separate contractors. Tenderers must price each Works package independently.
 - Packages 1 and 3 are likely to be awarded independently, where possible, to separate Contractors.

Contract objectives

1. The objective of this Contract is to deliver Works on three upland Sites in the Peak District and West Pennines. The sites are split into three packages of work. The aim of the Works packages is to restore hydrology, stabilise and revegetate bare peat, and increase biodiversity on the Sites.
2. The Works comprise the following tasks:
 - a. Supply and delivery of Materials required to complete the Works, unless otherwise stated.
 - b. Appropriate storage of Materials, as necessary.
 - c. Supply and delivery of suitable Trackway for storing materials on (see Packages if required).
 - d. Forwarding of Materials and Equipment required to complete the Works to and within Works Sites, **excluding Airlifting**
 - e. Planning the Aerial Load Lifting Works, including marking out drop locations and working in collaboration with the Authorities Airlifting Contractor to deliver the works
 - f. Marshalling of Aerial Load Lifting, including materials drops
 - g. Installation of Stone Dams into gullies
 - h. Installation of Peat Dams into gullies
 - i. Re-profiling of hags and gully sides
 - j. Installation of Timber Dams into gullies
 - k. Spreading of Heather Brash on bare peat
 - l. Spreading of Lime, Seed, and Fertiliser
 - m. Planting of Sphagnum Plug plants
 - n. Planting of Sedge and Dwarf Shrub Plug plants
 - o. Removal of Waste Materials from Sites.

Works quantities required for each Works Package and full details for each Works Site comprising the Works Packages can be found in **Appendices 1-3**.

Works specifications can be found in **Appendix 4**.

3. **The Supply and Delivery of Heather Brash, Lime, Seed, Fertiliser, Plug Plants and Sphagnum is the subject of a separate contract and will be supplied by the Authority.**
4. **The transportation of Materials to the Works Sites by helicopter is subject to a separate contract held by the Authority. The Contractor must liaise with the Authority's airlifting Contractor to co-ordinate the airlifting of Materials and provide all Marshalls required for the Airlifting of Materials. The Authority will ensure that the contract for the airlifting of any Materials to the Works Sites require that the contractor liaises with the contractors for these Works packages.**
5. The Contract has the following sub-objectives:
 - a. Production of and adherence to all health and safety material for the delivery of the Works, including a construction phase plan as required under the CDM 2015 regulations and the provision and maintenance of insurance in accordance with the Standard Conditions to the sum of £10,000,000 (ten million pounds).
 - b. Each of the Works tasks will have its own timings and deadlines which must be adhered to.
 - c. Clear communication with the Authority prior to and during the course of the Works, including but not limited to; Work Programmes, Works delivery, Waste Materials and Site access.
 - d. Provision of a GPS record of completed Works.
6. Tenderers are requested to provide rates in the Itemised Costs (provided as a separate spread sheet) for all aspects of the Works.
7. All Tenders must be returned by the **Tender Return Date by email** in accordance with Section 2.

Part B Specifications

1. Works Sites

1.1. Details of Works Sites and Packages of Works can be found in **Appendices 1-3**.

2. Works Specifications

2.1. Specifications for all Works types can be found in **Appendix 4**.

3. Equipment and Machinery

- 3.1. All Equipment and Machinery accessing the Work Site must be low ground pressure (<3 psi).
- 3.2. Contractors are responsible for the tracking of all Equipment and Machinery to the Works Site.
- 3.3. A low ground pressure excavator (<3psi) is essential for Peat Dam construction and Re-profiling. It is anticipated that this will be a lightweight machine of approximately 4 to 7 tonnes with wide ('bog') tracks. However, the exact specification and capability of Equipment and Machinery suitable for the Works shall be the responsibility of the Contractor. All such Equipment and Machinery shall have the prior approval of the Nominated Officer.
- 3.4. The Contractor should provide separate 'bog mats' or boards which will be available at all times on the Works Site and shall be used to cross soft ground or wet areas.
- 3.5. Machinery and Equipment movement on the Works Site should be kept to the minimum that might reasonably be expected to complete the Works. Machinery and Equipment access and egress routes must be agreed with the Nominated Officer prior to the Works Commencement Date.
- 3.6. The Contractor will provide a Method Statement with its Tender detailing its proposed method for tracking Machinery and Equipment to and from Site and the means for dealing with very wet, boggy ground when operating Machinery at the Works Site, with reference to the access points indicated above.
- 3.7. The Contractor shall ensure that suitably experienced machine operators will at all times be used to complete the Works.
- 3.8. Contractors should expect to cross waterlogged areas, small gullies and stream channels to reach Works Site.
- 3.9. When transporting Machinery and Equipment to and from the Works Site, the Contractor shall minimise damage to the ground surface and adjacent features (walls, pastures etc.).
- 3.10. There should be no visible signs of the formation of informal tracks.
- 3.11. Turves lifted by the turning and movement of tracked and / or wheeled Machinery must be replaced and distributed to cover the damaged area.
- 3.12. Ruts and track lines that are likely to result in erosion should be blocked or filled in. Works to rectify these should be agreed by the Nominated Officer prior to being undertaken.
- 3.13. The Works Site must be returned to as close to pre-Works condition as soon as practically possible at the end of the Project (and no later than the completion of the Works) and to the satisfaction of the Nominated Officer.
- 3.14. Contractors must provide site specific RAMS and outline machine recovery plans on award of contract (in advance of the work) but not at point of tender.
- 3.15. If a digger becomes stuck the contractor must stop work immediately, make the machine safe (e.g. lock, immobilise, secure and drain fuel if necessary) and inform the MFFP Nominated Officer. A recovery plan will be agreed to ensure further damage is minimised. Subsequent plans to "make-good" damage caused would be developed and agreed with relevant stakeholders prior to implementation. This may include work to make-good ruts,

seeding with nurse crop grasses and/or planting of moorland plants to aid stabilisation and revegetation. All such works shall be carried out at the cost of the Contractor.

4. Supply and delivery of Materials to Delivery and Lift Sites

- 4.1. **Heath Brash, Lime, Seed, Fertiliser, Plug Plants and Sphagnum Plugs will be supplied by the Authority.** The Contractor will be responsible for supplying all other Materials, which may include Stone and Timber.
- 4.2. The Contractor will be responsible for co-ordinating and receiving deliveries of **all** Materials to the Delivery and/or Lift Sites including Materials supplied by the Authority. The Contractor must be in attendance for all Material deliveries.
- 4.3. The specifications of Materials required for the Works are contained in **Appendix 4.**
- 4.4. The Contractor will provide all Equipment and Machinery required for unloading and handling of the Materials at the Delivery Sites and/or Lift Sites.
- 4.5. The Contractor is requested to provide rates for the supply, delivery and preparation of Materials for the Works.
- 4.6. The Authority may, at its option, supply Materials for the Works.
- 4.7. Where the Contractor is responsible for Materials supply and delivery, the Contractor will be required to deliver Materials in delivery vehicles that do not exceed a **maximum load of 20 tonnes of Materials per vehicle.** The Tenderer should take this requirement into consideration when pricing their delivery costs.
- 4.8. The Contractor will be responsible for transporting all Materials from the Delivery Site to the Lift Site if required.
- 4.9. The Contractor will provide signed delivery notes and photographs for Materials delivered to the Delivery Sites and/or Lift Sites to the Authority as a condition of the Contract. Payment will not be authorised by the Authority for completed works until the Contractor has provided such delivery notes.
- 4.10. Please see **Section I Part C** for Detailed Conditions regarding the supply and delivery of Materials.

5. Preparation of Materials for transportation to the Works Sites

- 5.1. The Contractor is required to sort the Materials into loads for transportation to the Works Sites. It is the Contractor's responsibility to ensure that the means of sorting the Materials into loads and the transportation of loads are suitable and safe.
- 5.2. The Contractor is responsible for supplying all Equipment (except airlifting strops which will be provided by the Authority's airlifting contractor) and Machinery required for the preparation and transporting of loads.
- 5.3. For the aerial load lifting of stone, the Authority anticipates that this will require the Contractor to provide a telehandler or excavator to load gully blocking stone into skips provided by the Authority's aerial works contractor.

6. Transportation of Materials to Work Sites

- 6.1. The Authority anticipates that transportation of Materials to the Works Sites will mostly require aerial load lifting.
- 6.2. **The Transportation of Materials to the Works Sites by helicopter is subject to a separate contract held by the Authority. The Contractor must liaise with the Authority's airlifting Contractor to co-ordinate the airlifting of Materials and provide all Marshalls required for the Airlifting of Materials.**
- 6.3. The Authority's airlifting contractor will provide strops for airlifting Materials.
- 6.4. At some Works Sites transportation of Materials may be able to be undertaken by tracked Machinery.

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- 6.5. The Authority will have the final decision on Work Sites that are suitable for transportation of Materials by tracked Machinery. Information on which Materials can be transported by low pressure vehicle can be found in the Works Packages. The contractor will not use any other method of transporting such Materials without the prior consent of the Nominated Officer.
 - 6.6. It is the Contractor's responsibility to plan and mark out the Drop Sites for the loads of Materials at the Works Sites. The Contractor must supply all materials for marking out Drop Locations.
 - 6.7. The Contractor must ensure that any means of transporting the Materials is an efficient operation.
 - 6.8. Flight distances, Lift Sites and access routes for transporting the Materials are detailed in each Works Package.
 - 6.9. The quantities of Materials for transportation will be detailed in each Works Package.
 - 6.10. It is the responsibility of the Contractor to ensure that it has all the required Equipment and Machinery and personnel to satisfactorily complete the Works.
 - 6.11. **The Contractor is responsible for Marshalling** and will provide sufficient personnel to Marshal each load at the Drop Site and at the Lift Site.
 - 6.12. **The Contractor is responsible for Marshalling** and will provide sufficient personnel to Marshal members of the public at the Drop Site and at the Lift Site.
 - 6.13. The following weights are typical for each of the types of Materials being loaded;
 - 1.1. One Dumpy Bag of Heather Brush (full) – 120kg
 - 1.2. One Timber Dam consists of 4-5 planks and 2 fencing stakes
 - 1.3. One Load of Stone – 750kg (as a Stone dam unit is required to be 750kg)This information is provided for information purposes only and may not be relied upon.

7. Installation and Construction

- 7.1. The Contractor is responsible for the installation / spreading / planting / construction of all items specified in the Works Quantities of each Works Package.
- 7.2. Installation and Construction should follow the Works Specifications as set out in **Appendix 4**.

8. Removal and Recycling of Waste Materials

- 8.1. The Contractor is responsible for preparing empty Bags and Waste Materials for removal from the Works Site. All Bags and Waste Materials shall be secured as per the methodology set out in Preparing Bags for removal by underslung load in **Appendix 4** Works Specification.
- 8.2. If Waste Materials are not secured and become wind blown, the Contractor shall promptly retrieve and secure all wind blown Materials at their expense.
- 8.3. The Contractor is responsible for removing all Bags and Waste Materials (by hand, low ground pressure vehicle or helicopter) in accordance with this Contract and as soon as possible after installation of the Material has been completed.
- 8.4. If Waste Materials are to be airlifted off the Works Site, the Contractor shall liaise with the Authority's airlifting contractor to plan and conduct the airlifting operation.
- 8.5. The Contractor shall provide marshals for the removal of Waste Materials and also to marshal members of public.
- 8.6. All Waste Materials shall be returned to the Delivery / Lift Site as agreed with the Nominated Officer and organised neatly awaiting collection.
- 8.7. The Contractor must arrange collection and recycling (where possible) of all Waste Materials from the Delivery / Lift Site.

9. Ancient Monuments and Archaeological Areas

- 9.1. Please refer to Clause 39 in the Standard Conditions (Section 3).
- 9.2. Site and areas of archaeological importance within and around the Works Site will be notified to the Contractor by the Authority prior to the Works Commencement Date.
- 9.3. The following activities can cause damage to archaeological remains:
 - 9.3.1. Cutting, flailing and harvesting (e.g. *Molinia* flailing, heather brash and bale cutting).
 - 9.3.2. Excavations (e.g. Re-profiling and gully blocking).
 - 9.3.3. Other Machine operations (e.g. tracking to and from Site).
- 9.4. The Contractor must not cause damage to any identified archaeological feature during the Works.
- 9.5. The Contractor must take the following measures to avoid damage to archaeological features not identified:
 - 9.5.1. Excavations for borrow pits should leave a minimum of 20cm of peat above the mineral layer undisturbed.
 - 9.5.2. Items of archaeological interest (including but not limited to preserved wood and microliths) uncovered by excavations should immediately be identified to the Nominated Officer and Works in that area halted to allow the local archaeological advisor to be informed.

10. Providing a GPS record of the completed Works to the authority upon works completion.

- 10.1. GIS information relating to the Works will be provided to the Contractor prior to the commencement of the Works.
- 10.2. Contractor employees must be capable of using GPS systems and maps to navigate the Works Sites and locate individual locations of Works.
- 10.3. During completion of each Works type at the Work Sites, the Contractor must record the location and type of, for example, each dam constructed, bare peat brashed, polygon cut, hag reprofiled, polygon planted with a GPS device and the GPX file and OS co-ordinates must be promptly passed to the Nominated Officer.
- 10.4. For the purposes of recording data, **1 GPS point/polygon must be recorded per 1 constructed dam/bund, polygon cut/planted/brashed.**

Part C Detailed Conditions

1. Timing of Project Delivery:

- 1.1. Individual Commencement and Completion dates are identified within each Works Package. In any given year, no Works can be undertaken between 1 April and 14 August.
- 1.2. Each contract for each Works Package shall contain KPIs, Works Commencement Date and Target Completion Date, together with an obligation on the Contractor to ensure the relevant Works are delivered in accordance with these provisions.

2. Programme of Work

- 2.1. The Contractor is required to submit for approval a Method Statement and Programme of Works. These will include but not be limited to:
 - 2.1.1. Equipment to be used.
 - 2.1.2. Staffing.
 - 2.1.3. Methods of completing each Works task.
 - 2.1.4. Timings and order of Works.
 - 2.1.5. Risk Assessments

The Programme of Works will be confirmed with the successful Tenderer at the pre-contract Meeting.

2.2. The Contractor must adhere to the Programme of Works. It is essential that the Works are carried out in accordance with the Programme of Works. In the event that the Contractor is in breach of this provision (save where such breach arises wholly from the negligence of the Authority or its contractors) the Authority reserves the right to treat such breach as a material breach for the purposes of Section I Part C Clause 16 (Liquidated Damages).

2.3. The Authority may vary such Programme of Works on notice to the Contractor. If such variation occurs at any time during the Contract Period the Authority shall use reasonable endeavours to give the Contractor at least 48 hours prior notice. Any such variation shall not be treated as a Contract Variation.

3. Supply and delivery of Materials to Delivery and Lift Sites

3.1. The Nominated Officer may inspect the Materials at any time and may refuse to accept Delivery if their condition fails to reach the required standards set out in Section I and **Appendix 4**. In the event that the Nominated Officer rejects any Materials, the Contractor shall immediately procure replacement Materials (at its own cost) or (at the option of the Nominated Officer) may suspend this Contract and the Authority may procure replacement Materials from an alternative supplier and the Contractor shall not be entitled to Payment in respect of such Materials.

3.2. Materials supply - At the Works Commencement Date the Contractor will be required to have sufficient Materials to be able to start the Works to the Specification.

3.3. The Contractor must ensure that, having regard to lead times, it has sufficient Materials at the Lift Sites in order to ensure that it can carry out and complete Works in accordance with the Programme of Works.

3.4. The Nominated Officer must be informed 1 week prior to the delivery of Materials, Equipment and Machinery to inform stakeholders and Landowners.

3.5. On delivery of the Materials to the relevant Delivery, Works and/or Lift Site, the Materials are the responsibility of the Contractor, notwithstanding ownership of the Materials by the Authority.

3.6. In the event that the Materials are not transported to the Works Site then it is the responsibility of the Contractor to remove the Material from the Delivery and/or Lift Site as soon as practicably possible, and in any event within 15 days of the relevant Works Completion Date. The Contractor shall ensure that the Materials are removed to safe and secure storage.

3.7. The Contractor will provide signed delivery notes for Materials delivered to the Delivery Sites and/or Lift Sites to the Authority as a condition of the Contract.

3.8. The Contractor shall notify the Nominated Officer on an agreed day before each working week of:

3.9. The amount of Materials it shall arrange delivery of and when;

3.9.1. The Lift Sites to which the Materials shall be Delivered (if applicable);

3.9.2. and shall incorporate the requirements of the Nominated Officer.

4. Delivery, Lift and Work Sites

4.1. The Contractor will be responsible for all aspects of the Delivery Lift and Work Sites. These are to include, but not limited to, Traffic Management, Site security, H&S considerations, damage to the Site and surrounding areas, safety of its staff and members of the public and any other considerations that may be identified by the Nominated Officer, or considerations under CDM 2015.

4.2. The Contractor is responsible for ensuring that the Site and any Access Track are made safe to persons and property for the duration of the Contract

4.3. The Sites are unsecured with access to the public. Equipment and machines and tools may be left unattended or remain on the Site overnight at the Contractor's own risk, but only in locations to be agreed with by the Nominated Officer.

4.4. The Contractor must ensure that any access routes remain open to the public and any other legitimate users.

4.5. Due consideration must be taken when dealing with the public and other legitimate users on an open area. The Contractor must put in place and ensure there is always suitable and sufficient site safety and signage.

4.6. The Contractor shall not damage or permit damage to any Site. In the event of any damage, the Contractor shall procure that the same is reinstated to the absolute satisfaction of the Nominated Officer within 1 month of the last delivery from the Site or by the Contract Completion Date, whichever is soonest. The Contractor shall rectify all damage at his own expense and to the absolute satisfaction of the Nominated Officer.

4.7. The Site(s) is to be kept in a neat and tidy condition commensurate with its use as a temporary site within a SSSI area and the South Pennines Special Area of Conservation.

4.8. The Nominated Officer shall give instructions to the Contractor before the Works Commencement Date as to extent of land at the relevant Delivery or Lift Site(s) that may be used in connection with the Works (including, if applicable provision of a copy of any permissions granting use of the Lift Site(s)). The Contractor must comply with these instructions and any conditions contained in any permission and ensure that all sub-contractors are notified of and comply with the same.

4.9. The Contractor should liaise with the Nominated Officer at least 48hrs before requiring initial access to the relevant Site, in order that the Landowner and other stakeholders can be advised.

5. Materials Remaining

5.1. In the event that, following construction/installation of the Works in accordance with the Specification, Materials remain unused at any Site, the Contractor shall promptly notify the Nominated Officer and (subject to the Nominated Officer's prior approval) the Contractor shall use such remaining Material to construct further Works in accordance with the Specification in such locations as shall be agreed by the Nominated Officer. The construction of such Works shall not be treated as a Contract Variation and the Contractor shall not be entitled to any additional costs in relation to such works.

6. Quality of Works

6.1. The Contractor shall ensure that a dedicated Foreman is assigned to the Works for the entire Contract Period to ensure continuity management. The identity of the Foreman will be notified to the Nominated Officer on or before the Works Commencement Date. The Contractor shall not change the Foreman without the prior approval of the Nominated Officer

6.2. The Authority expects the Foreman to be responsible for the quality of the delivery of the Contract.

6.3. The Authority may check the quality of the Materials at the Donor Site or the Delivery Site or Lift Site. If the quality of the Materials is not ensuing to the Specification then the cost of any subsequent Site visits made by the Authority in order to rectify / monitor quality issues will be the responsibility of the Contractor.

6.4. The Authority may check the quality of the constructed Works at the Works Sites. If the quality of the constructed Works is not ensuing to the specification in this Section then the cost of any subsequent Site visits made by the Authority in order to rectify / monitor quality issues will be the responsibility of the Contractor.

6.5. Such additional Site visits will be charged to the Contractor at a rate reflecting the reasonable costs incurred by the Authority.

7. Temporary Trackway

7.1. The Contractor will be responsible for arranging the supply and installation of any temporary trackway (“Trackway”) required for all Delivery Site and Lift Site areas. The Trackway should provide an area that is large enough to allow access and egress to forwarding vehicles without them driving on any vegetation, and to allow storage of any Materials delivered to the Lift Site without affecting the surrounding vegetation. The location, size and shape of the Trackway will be agreed between the Nominated Officer and the Contractor prior to its installation. Any proposed amendments to the Trackway should be approved by the Nominated Officer in advance of installation.

7.2. The Trackway, quantity of Trackway and the Trackway plan will be agreed by the Authority and Contractor as being fit for purpose and consummate to the requirements of the task prior to its installation at the Delivery/Lift Sites.

7.3. The Contractor will be present at the Delivery/Lift Sites to receive and direct the Trackway installation and will provide all delivery notes to the Authority.

7.4. The Contractor will inspect the Trackway when it has been installed and procure a photographic schedule of condition to be agreed and signed by the Nominated Officer and Contractor prior to its use. In the event of any damage occurring to the Trackway during the Works, the Trackway must be replaced immediately to the absolute satisfaction of the Nominated Officer and at the Contractor’s cost and before any further Works occur. Any delay occurring due to such damage shall not be treated as Contract Variation or Force Majeure Event. The Contractor shall also be liable and indemnify the Authority for any costs incurred by it arising from this Clause, payable at the end of the Contract Period on demand.

8. Health and Safety: Principle Contractor

8.1. The Works are subject to the CDM Regulations 2015.

8.2. The Authority will nominate the Principle Contractor.

8.3. The Principle Contractor will be responsible for managing Health and Safety during the course of the Contract.

8.4. The Authority will provide the Principle Contractor with a Pre-Construction Health and Safety Plan prior to commencement of the Works.

8.5. The Principle Contractor must provide the Authority with a Construction Phase Plan prior to commencement of the Works.

8.6. The Construction Phase Plan must be provided to the Authority in the form of a single comprehensive document by email, or by such other means as agreed with the Nominated Officer.

8.7. The Construction Phase Plan must include site- and task-specific Risk Assessments and Method Statements, all relevant Material Safety Data sheets and COSHH Assessments.

8.8. It is the responsibility of the Principle Contractor to identify all potential hazards associated with the Works and provide Risk Assessments and Method Statements for the mitigation of these within the Construction Phase Plan. The information provided to the Principle Contractor by the Authority within the Pre-Construction Health and Safety Plan should not be treated as exhaustive or definitive.

8.9. Hazards should be considered in terms of the Site(s) and any other locations utilised during the delivery of the Works. Works(s) and operations and activities undertaken when delivering the Works and the potential impacts of these on the Site(s) and the users. Users, any and all individuals, groups, organisations and companies that may have reason to visit the Site(s) on which the Work(s) are being undertaken.

8.10. Prior to commencing any Works, the Principle Contractor will submit any alterations to the Construction Phase Plan that may be necessary, for the approval of the Nominated Officer. The Principle Contractor’s Construction Phase Plan will be subject to the Nominated Officers approval, prior to the Works Commencement Date.

8.11. The Contractor is to provide his own welfare facilities for the duration of the Works.

9. Health and Safety: All Contractors (including the Principle Contractor)

9.1. Method Statements supplied with the Tender will need to be approved by the Nominated Officer. Method Statements should include operational Risks Assessments, copies of which are to be submitted with this Tender. Failure to submit Method Statements and Risk Assessments may result in the disqualification of the Tender.

9.2. No later than 28 days prior to the Works Commencement Date, each Contractor must supply to the Principle Contractor:

9.3. Copies of Site Risk Assessments for all the Sites identified in the Location Maps.

9.4. Material Safety Data sheets, if required.

9.5. A copy of his Health and Safety Policy which is issued to his employees.

9.6. The Contractor(s) will be responsible for complying with the Construction Phase Plan during the course of the Contract.

9.7. Prior to commencing any Works, the Contractor(s) will submit any alterations to the Method Statements that may be necessary, for the approval of the Principle Contractor.

9.8. Each Contractor is to provide his own welfare facilities for the duration of the Works unless agreed otherwise with the Principle Contractor.

9.9. Potential Hazards Associated with the Works

9.10. The Contractor should identify all potential hazards associated with the Works and provide risk assessments and Method Statements for the mitigation of these with the Tender Return.

9.11. Once the site(s) are known and contracts awarded, site-specific Method Statements must be provided to the Principle Contractor. Hazards should be considered in terms of the Site(s) and any other locations utilised during the delivery of the Works. Works(s) and operations and activities undertaken when delivering the Works and the potential impacts of these on the Site(s) and the users. Users, any and all individuals, groups, organisations and companies that may have reason to visit the Site(s) on which the Work(s) are being undertaken.

10. Restricted Dates

10.1. Works may be restricted (or prohibited) on the instructions of the Nominated Officer on the Restricted Dates.

10.2. The Contractor will be informed of the Restricted Dates at the pre-contract meeting.

10.3. No Works are permitted on the Restricted Dates. Any breach of this Clause shall be treated as a material breach and the Contractor shall be liable for any damages, delay and expenses suffered or claimed by or against the Authority as a result. The Authority reserves the right to terminate or suspend the Contract in such circumstances.

11. Utilities and Services

11.1. The Contractor is responsible for the identification of general and exact location of utilities and services within the Sites prior to the commencement of the Works.

11.2. Information provided by the Nominated Officer or other parties under the direction of the Nominated Officer is for guidance only and not a comprehensive survey and account of all utilities and services on the Site(s).

11.3. The Contractor must provide the Nominated Officer with an auditable written record demonstrating that a search for utilities and services has been undertaken prior to the commencement of the Works.

11.4. The Contractor must provide the Nominated Officer with the exact locations of any services and utilities identified on the Work Site(s) prior to the commencement of the Works.

12. Water Supplies

12.1. Notwithstanding the provisions of Clause 11 above the Authority is aware that water supplies/services may be located within the Works Site. The Nominated Officer shall provide to the Contractor such information that it holds on or before the Works Commencement Date. However, this does not obviate the need for the Contractor to carry out enquires of landowners and tenants and all other relevant surveys and enquiries to establish the exact location of such water supply.

12.2. If during the course of the Works, the Contractor discovers any pipe or line or service apparatus relating to any water supply (or otherwise) it shall immediately notify the Nominated Officer and shall immediately comply with all requirements of the Nominated Officer regarding such water supply (including but not limited to) ceasing the Works until the extent of the water supply has been established.

13. Daily Log

13.1. The Contractor must provide the Nominated Officer with a Daily Log of the Works carried out each day (even if no Works are carried out on that day). The Daily Log shall contain:

- i. the name of the relevant Site;
- ii. a map with a shaded area showing the approximate location(s) of Materials applied to the Site(s);
- iii. the reason for any inactivity regarding point i; and
- iv. brief summaries of any Accidents, Incidents, Near Misses, Unsafe Acts or any event reportable under RIDDOR (and defined therein).

13.2. The Nominated Officer shall provide the Contractor with a suitable template for the Daily Log. The Contractor may use their own format instead with the prior approval of the Nominated Officer.

14. Downtime Expenses

14.1. Downtime Expenses will be paid for whole or half days where the Nominated Officer instructs the Contractor not to carry out any part of the Works on a day where it is reasonably practical for Works to occur. Downtime Expenses will not be paid for any other reason (unless arising from the negligence of the Authority).

14.2. Where the Contractor, having received such notice from the Nominated Officer, is able to work on any related (or unrelated) contract for such period of the suspension of the Works, Downtime Expenses shall not be payable for such period and the Contractor shall confirm in writing to the Nominated Officer that such alternative work has not been carried out.

15. Geographic Information Systems (GIS)

15.1. The Nominated Officer will provide the Contractor with the GIS files necessary to carry out the Works at least seven days before the Works Commencement Date.

15.2. The Tenderer must specify at pre-start meeting their GPS Co-ordinate Reference System (CRS) requirements.

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- 15.2.1. Moors for the Future use MapInfo and the CRS British National Grid (BNG EPSG: 27700). If the Tenderer does not specify a system then Moors for the Future shall send GIS information to the Contractor in MapInfo format and the CRS British National Grid.
- 15.3. The Contractor is responsible for ensuring that all received GIS Information works on their system. The Contractor must report any faults to the Nominated Officer within 48 hours of receiving the GIS Information.
- 15.3.1. If a fault is reported to the Nominated Officer within 48 hours of receiving the GIS Information, then Moors for the Future shall re-supply the GIS Information. The Contractor must check the functionality of the new GIS Information as soon as is reasonably practicable, and in any event within 48 hours of receiving it.
- 15.3.2. The above step shall be repeated as often as necessary until the Contractor is satisfied that the GIS Information functions to their satisfaction.
- 15.3.3. If the Contractor fails to report any fault in received GIS Information within 48 hours of having received it, then Moors for the Future may, at their discretion, charge the Contractor up to £70 per hour (or part thereof) of time spent per MFF or PDNPA Officer involved in re-submitting this information (being reasonable associated costs) to re-supply the GIS Information.
- 15.4. Upon completion of the Works at each Site, the Contractor must supply the Nominated Officer with GIS Information regarding the treated areas.
- 15.4.1. Moors for the Future prefer that the GIS Information be sent in MapInfo format with the CRS British National Grid (BNG EPSG: 27700).
- 15.4.2. The Contractor may send the GIS Information in an alternative format but they must state the CRS used.
- 15.4.3. The Contractor must provide the start and end dates for each Works activity undertaken on the Site to accompany the GIS information. These dates may be included in the GIS data or provided in an accompanying email or document.
- 15.4.4. No Works will be signed off as completed until the above information has been received by Moors for the Future.

16. Liquidated Damages

16.1. This Contract consists of one element of a much larger project involving a number of contracts for the delivery of goods and the provision of services. If the Contractor fails to complete the Works by the dates required, the Authority may incur costs for a related contract or for the failure to deliver the project as a whole. The Authority will act reasonably in minimising such costs and acknowledges that such failure may result from a Force Majeure Event. However, the Authority reserves the right to claim the costs it has incurred as a result of the failure of the Contractor to comply with its obligations.

16.2. In the event that the Works are not completed by the relevant Target Completion Date as set out in the relevant contract (save where the delay is caused by a Force Majeure Event or the negligence or omission of the Authority) the Contractor shall be liable to pay on demand to the Authority in liquidated damages such reasonable costs as the Authority may reasonably incur (including but not limited to the costs of the Authority suspending the Contract and obtaining the services of another contractor to perform the Works) as a result of such delay whether in relation to this Contract or such other dependant contract where the delay has an adverse effect on the Project.

17. Invoices

17.1. All Invoices received by the Authority must include the PDNPA Purchase Order number on the Invoice. Failure to do so will result in a request by the Authority for a re-submitted invoice with the PO number on it. This may delay payment.

17.2. All Invoices received by the Authority must only relate to the Purchase Order sent out by the Authority. Contractors must not combine Purchase Order numbers into a single Invoice. If this does occur then the Authority will return the Invoice/Invoices to Contractor and ask for them to be re-submitted. This may delay payment

18. Communications and Marketing

18.1. Any works for the Authority may be included in promotional material released by the Authority.

18.2. By accepting an Authority Purchase Order the Contractor is consenting to use their company image, branding and equipment for the use of publicity and marketing by the Authority.

18.3. The Authority may include, but reserves the right not to, credit the Contractor in any publicity they release.

18.4. The use of Contractor images does not include images of the faces of individual workers. Should any pictures of faces, or recognisable features of an individual, be included in an image which the Authority wishes to use then consent will be requested of the individual through the Contractor. If they refuse permission then these pictures will not be used.

18.5. The consent given by this Clause refers to all forms of media including social media.

18.6. The Contractor shall only be permitted to use images taken during the Works if they adhere to the Moors for the Future Communications protocol. A copy of this protocol will be freely available on request from the Authority via the Nominated Officer. This is applicable for all forms of media, including social media. The protocol has different sections relating to the different types of publicity and media and for the avoidance of doubt referrals can be made to the MFFP communications manager.

18.7. Any unauthorised use of Authority works for the Contractors own publicity will assessed for suitability shall be removed on request.

Part D Itemised Costs

Please complete the Itemised Cost Spreadsheet and return with your tender as both .xls and .pdf

Section 2: Instructions on submitting a tender

Tenders should be submitted in accordance with the following instructions and include the following items on the checklist.

- Part D Itemised Costs spreadsheet .xls and .pdf
- Appendix 5 Form of Tender
- Appendix 6 Tender questionnaire (which includes the provision of documentation relating to the Quality criteria applied to the tender – see paragraph 14 below)
- Appendix 7 Non-collusive tendering certificate
- Proof of insurance requested in Section 3
- Risk Assessments (generic)

1. Invitation to Tender (ITT)

The Authority is seeking tenders from suitably experienced and equipped Contractor to undertake the Works.

The Works required are set out in the Specification.

2. Basis of Tenders

Tenders are being invited on an open award procedure.

3. Scope

Tenders are being invited on the basis of undertaking the whole of the Works set out in the relevant packages. However, the Authority reserves the right to split the award of the Works within those packages.

4. Contract Period

Tenders are invited for the period of a single task.

5. Tenderers to visit

Tenderers are invited to visit the Site(s) to ascertain all relevant conditions and means of access and to thoroughly acquaint themselves with the extent and nature of the proposed Works and will be deemed to have done so before submitting a Tender.

6. Presentation to the Authority

All selected Tenderers may be asked to make a presentation to Officers of the Authority on methods proposed for the performance of the Works. If the Authority decides to require presentations details of what must be covered by the presentation and how it will be evaluated will be sent to Tenderers no later than 7 days prior to the presentation.

7. Queries about this ITT

Tenderers are advised to study the Tender Documentation and all other documentation provided by the Authority. These documents should be read and their true intent and meaning ascertained before submitting a Tender.

- 7.1. Any queries concerning the information contained in this specification should be sent by email to: Dewi Jackson for Package I

Fiona Draisey for Package 2
Jody Vallance for Package 3

Email: dewi.jackson@peakdistrict.gov.uk

Email: fiona.draisey@peakdistrict.gov.uk

Email: jody.vallance@peakdistrict.gov.uk

- 7.2. There should be no other contact with the Authority on this matter. Any direct contact shall result in your exclusion from this ITT. Following submission of the Tender return, an opportunity may be given for suppliers to make a presentation to the Authority.
- 7.3. Please be aware that your query, together with our response may, to ensure transparency and fairness, be circulated to all undertakings expressing an interest on an anonymised basis. If you consider that your query discloses commercially confidential information you must, with or upon your query, clearly indicate which information you consider is commercially confidential and why. The Authority will then exclude this information from any circulation. Blanket statements indicating commercial confidentiality will be ignored.

8. Errors in completed tenders

The Tenderer shall be deemed to have satisfied itself before submitting its Tender as to the correctness and sufficiency of its Price.

9. Sufficiency of Tender

The Tenderer shall be deemed to have undertaken all inspections, examinations and all other enquiries reasonable or necessary in connection with the terms and subject matter of the Tender. The Tenderer acknowledges and confirms that it has the requisite expertise, experience and equipment to perform its obligations under the Contract. The Authority will not accept and shall not be liable for any claims that are based upon a Tenderer's failure to obtain or have due regard for any information necessary to prepare a fully compliant and complete tender.

10. Period of Validity

Tenderers are required to keep their tenders valid for acceptance for a period of 3 months from the Tender Return Date.

11. Tendering procedure and submission requirements

11.1. THE DEADLINE FOR RECEIPT OF TENDERS IS 17:00 ON FRIDAY 20 OCTOBER 2023.

11.2. Tenders must be submitted by email. Please see submission instructions below.

11.3. Tenders submitted electronically:

- 11.3.1. It is the Tenderer's responsibility to ensure that its Tender complies with the submission requirements and is received by the Authority by the date and time set out. The Authority accepts no responsibility for any problems arising from the Authority's or the Tenderer's IT software, infrastructure, input or internet connectivity, the security of or access to the internet, the capability or capacity of the Authority's or the Tenderer's email systems or Tenderer's failure to check their email system for correspondence received from the Authority about this Tender. Tenderers must note that the current maximum size of any email receivable by the Authority is **10mb**. It is the responsibility of the Tenderer to ensure that its Tender is received by the Authority. Tenderers are strongly advised not to submit their Tender immediately before the tender return deadline.

- 11.4. The time and date displayed by the server clock within the Authority's system shall be the standard upon which compliance with tender submission deadlines shall be determined.
- 11.4.1. The Tender shall be made on the Form of Tender at **Appendix 5**. It must be fully completed and signed on behalf of the Tenderer, submitted to us in pdf format and accompanied by:
- 11.4.1.a. Tender Questionnaire at **Appendix 6** fully completed and signed on behalf of the Tenderer submitted to us in pdf format and accompanied by any documents referred to therein
- 11.4.1.b. Non-collusive tendering certificate at **Appendix 7** signed on behalf of the Tenderer and submitted to us in pdf format;
- 11.4.1.c. Itemised costs as detailed within **Section I Part D**;
- 11.4.1.d. Details of any part of the Works to be sub-contracted;
- 11.4.1.e. Copies of all Insurance Certificates, for the Tenderer and any sub-consultants;
- 11.4.1.f. Any other information requested in the ITT.

Tenders must be submitted by e mail to Tenders@peakdistrict.gov.uk

By 1700 on FRIDAY 20 October 2023 (the Tender Return Date)

The following, and only the following, must be used in the subject line:

REF: MFF 147 2023-2024 Moorland Restoration Ground Works

All attachments must be in pdf form

No information must be included in the covering e mail apart from the identity of the sender and a list of attachments

- 11.5. Only one Tender is permitted per Tenderer. If a Tenderer submits more than one Tender, only the one with the latest time and date of receipt noted (provided that this is prior to the tender deadline) will be evaluated, any other Tenders will be disregarded.
- 11.6. The Authority reserves the right to issue supplementary documentation at any time during the Tendering process to clarify or amend any aspect of the ITT or any of the documents referred to in the ITT. All such further documentation shall be deemed to form part of the ITT and shall supersede any part of the ITT to the extent indicated.
- 11.7. No tender received after the deadline for receipt of tenders stipulated above shall be considered **under any circumstances**.
- 11.8. The Authority does not undertake to accept the lowest or any tender/ rates or to award the contract at all. The Authority may withdraw this invitation to tender at any time on giving written notice to all tenderers expressing an interest.
- 11.9. The successful Tenderer will be required to enter into the Form of Contract (form available on request). No derogations will be permitted.
- 11.10. Qualified tenders are not permitted and will be rejected.

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- 11.11. The Authority reserves the right to seek clarification from Tenderers to assist in its consideration of Tenders. This will not however be an opportunity for Tenderers to add to or supplement their tender.

12. Basis of Tender

- 12.1. The Tender shall show the Tendered sum for the actual Works and the VAT separately.
- 12.2. The Tender must include the value of all of the Works and must cover all costs and expenses which may be incurred in order to complete the Works in accordance with the Tender documentation and to assume all express and implied risks, liabilities and obligations imposed by the form of contract and all other documents forming part of the Tender documentation.
- 12.3. The Tenderer shall be deemed to have satisfied itself before submitting its Tender as to the correctness and sufficiency of its rates and prices.
- 12.4. Tenderers must obtain for themselves, at their own expense, all information necessary for the preparation of their Tenders and must satisfy themselves that they fully understand the requirements of the Contract.

13. Sub-contracting

- 13.1. When submitting its Tender, the Tenderer must notify the Authority of any parts of the Works that it proposes to sub-contract. Failure to do so may invalidate any such Tender.

14. Tender Evaluation

- 14.1 Tenders will first be evaluated against the following requirements which will be scored on a pass/fail basis. Any Tender that scores "Fail" against any of these requirements may be deemed non-compliant and rejected without further evaluation.
- Completed Tender Questionnaire.
This will include
 - Written technical and financial references (including the Tenderer's financial accounts for such period as shall be notified) as may be requested
 - The Tenderer's technical and professional ability and previous experience of contracts delivered for the Authority or other organisations. The Authority is entitled to take into account any failure to discharge obligations under previous relevant contracts undertaken by the Tenderer (or any proposed sub-contractor) in assessing whether the required minimum standards for the Works are likely to be met. Tenderers are requested to supply examples of similar Works supplied to other clients. The Authority may consider evidence of performance on previous comparable contracts for the Authority
 - Whether the Tenderer is subject to any enforcement or legal action or other pending investigations by either the Authority or other public agencies.
- 14.2 The successful Tenderer will be selected based on an evaluation using the criteria set out below:
1. Price (60% of the total score value);
 - $60 \times (\text{Lowest Tender Price}) \div (\text{Tenderer X's Price})$
 2. Quality criteria (40% of the total score value):
 - Quality criteria 1 (20% of the total score value): Provision of evidence detailing the Tenderer's previous relevant experience and expertise.

- Quality criteria 2 (20% of the total score value) Provision of a methodology and programme of works detailing how the Tenderer will meet the Contract Objectives and Specifications for each individual works package being tendered for.

Criteria	Weighting	Evaluation Criteria
Price	60%	$60 \times (\text{Lowest Tender Price}) \div (\text{Tenderer X's Price})$
Quality Criteria 1	20%	4 x score (see table below)
Quality Criteria 2	20%	4 x score (see table below)

Quality Criteria responses will each be marked against the following scoring methodology

0	The Tenderer has given no response and/or if the response is not acceptable and/or does not cover the relevant heading/s.
1	There are major weaknesses or gaps in the information provided. The Tenderer displays poor understanding and there are major doubts about fitness for purpose. The approach to risk gives rise to major concerns. Major concerns about the Tenderer's experience and capability.
2	The proposal will in parts be sketchy with little or no detail given of how the Tenderer will meet the criteria. Information provided is considered weak or inappropriate and is unclear on how this relates to our requirements or the outputs/outcomes of the project. The approach to risk is not well supported and gives rise to concerns. Some concerns about understanding of the steps involved to deliver the aspects of the question posed, and/or the Tenderer's experience and capability.
3	The proposal has addressed the majority of our requirements but will lack some clarity or detail in how the proposed solutions will be achieved. Evidence provided, while giving generic or general statements, is not specifically directed toward the requirements or the outcomes/outputs of this project. The proposal demonstrates an acceptable approach to risk and clearly captures the understanding of the steps involved to deliver the aspects of the question posed, giving a reasonable level of confidence in the Tenderer's experience and capability.
4	The proposal has addressed, in some detail, all or the majority of our requirements. Evidence will have been provided to show not only what will be provided but will give some detail of how this will be achieved. It is clear how the proposals relate directly to the aims of the project and be specific, rather than general, in the way proposed solutions will deliver the desired outcomes and outputs. The proposal demonstrates an acceptable approach to risk and clearly captures the understanding of the steps involved to deliver the aspects of the question posed, giving a good level of confidence in the Tenderer's experience and capability.
5	As well as addressing all our requirements the Tenderer demonstrates a deep understanding of the project and / or may present innovative ideas (where appropriate). Proposals link directly to relevant project requirements, outcomes and outputs (as the case may be) and show how they will be delivered and the impact that they will have on other areas/stakeholders. Proposed solutions will deliver the desired outcomes and outputs. The proposal demonstrates little or no risk and fully captures the understanding of the steps involved to deliver the aspects of the question posed, giving a very high level of confidence in the Tenderer's experience and capability.

Tenderers scores for Quality and Price will then be added together to produce an overall score and the Tenderer with the highest overall score will be awarded the contract.

Rejected or eliminated tenders will not be scored.

15. Award of Contract

- 15.1. The successful Tenderer will be required to promptly execute and return to the Authority the Contract in the form of contract included with this ITT and until such execution the successful Tenderer together with the Authority's written acceptance shall constitute the Contract.

16. Obligations

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- 16.1. Parties proposing to submit a tender are advised to ensure that they are familiar with the nature and extent of their obligations if their Tender is accepted.

17. Accuracy

Information supplied to Tenderers by the Authority (whether in these documents or otherwise) is supplied for general guidance in the preparation of tenders. Tenderers must satisfy themselves by their own investigations with regard to accuracy of any such information and no responsibility is accepted by the Authority for any inaccurate information obtained by Tenderers.

18. Confidentiality

All information supplied by the Authority in connection with the Invitation to Tender shall be regarded as confidential by the Tenderer except that such information may be disclosed for the purpose of obtaining quotes and/or professional advice necessary for the preparation of the Tender provided that a condition is imposed in similar words to this paragraph upon any person to who disclosure is made.

19. Canvassing

Tenderers face automatic disqualification if they canvass for the Works by approaching any Member or Officer of the Authority with a view to gaining more favourable consideration of their tender. Tenderers should state whether Members or Officers of the Authority have any direct or indirect interests in their organisation.

20. Transparency

20.1 The Tenderer in submitting its Tender agrees and accepts the Authority in complying with its obligations under the government's transparency agenda, which requires the Authority to publish the Tender Questionnaire and the ITT and the text of the contract documentation to be signed with the winning Tenderer (the "Contract"), and the name of the contractor; the date on which the contract was entered into; the value of the contract; and whether the contractor is a SME or VCSE. The Tenderer gives its consent for the Authority to publish the text of the Contract, and any schedules to the Contract in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides.

20.2 The Tenderer in submitting its Tender will acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") the text of the Contract, and any schedules to the Contract, is not confidential information except to the extent specifically stipulated in the Contract. The Authority shall be responsible for determining in its absolute discretion whether any part of the Contract or its schedules is exempt from disclosure in accordance with the provisions of the Act.

Section 3: Definitions and standard terms and conditions

I. Definitions

In this Contract the following terms shall have the meanings prescribed unless otherwise stated or otherwise required by the context:

“Accident” means any event which results in injury, damage or loss

“Airlifting Works” means any airlifting of Materials and/or personnel in accordance with the Specification

“Authority” means the Peak District National Park Authority

CDM Regulations” means the Construction (Design and Management) Regulations 2015 and the current approved code of practice published by the Health and Safety Executive (or equivalent)

“Contract” means the Form of Contract to be signed and completed by the Parties

“Contract Particulars” means the particulars of the Contract set out in the Form of Contract

“Contract Period” means the period set out in the Contract Particulars

“Contamination” means any contamination due to a discharge spillage release or emission into any environment medium or substance which is capable of causing harm to the health of living organisms or other interference with the ecological systems of which they form a part

“Conditions” means together the Standard Conditions and the Detailed Conditions

“Contractor” means the Tenderer whose tender has been accepted by the Authority

“Contract Variation” means any addition or variation to the Works in accordance with the Standard Conditions

“Covid-19” means the Covid-19 pandemic or any similar or equivalent epidemic as determined by HM Government

“CROW” means the Countryside and Rights of Way Act 2000

“Daily Log” means an electronic or written report if required in the Specification

“Defects Liability Period” means the defects liability period set out in the Contract Particulars (if any)

“Delivery Site” means any areas to which the Materials or part are to be delivered more particularly described in the Specification and (if applicable) identified on the Location Maps

“Donor Site” means those areas from which the Materials or part are to be sourced in accordance with the Specification and (if applicable) identified on the Location Maps

“Drop Site” means any areas to which the Materials or part are to be dropped by helicopter pursuant to the Specification and (if applicable) identified on the Location Maps

“Detailed Conditions” means the conditions contained at **Section I**

“Environmental Law” means all laws including common law statute bylaws or regulations applicable in England and Wales and all orders of any Regulatory Authority concerning the protection of the environment or human health

“Equipment and Machinery” means vehicles machinery plant tools and all other associated items required for the proper performance of the Works

“Form of Tender” means the tender return form at **Section I**

“Foreman” means the supervisor assigned by the Contractor to supervise the Works (if any)

“Force Majeure Event” means civil commotion, riot, invasion, war (or threat of war), explosion, biological disaster, severe weather event which would result in a reasonably prudent contractor not being able to continue and complete the Works, fire, earthquake, epidemic, pandemic, nuclear disaster, act of terrorism or other natural physical disaster

“Form of Contract” means the form of agreement annexed

“Incident” means an event which has caused or could have caused, injury, illness or damage to assets, the environment or third parties

“Invitation to Tender” means the invitation to tender for the Works

“Itemised Costs” means the costs for the Works itemised by the Tenderer in the Form of Tender

“Landowner” means those persons who own the freehold or leasehold title to the land on which the Works are to be performed (independent of any grazing or other rights) (if any)

“Location Maps” means the maps contained or referred to in **Section 1**

“Lift Site” means any sites from which the Material or part is to be airlifted pursuant to the Specification and (if applicable) identified on the Location Maps

“Material(s)” means all materials utilised by the Contractor in delivering the Works (whether or not supplied by the Authority or the Contractor pursuant to the Contract)

“Method Statement” means a statement setting out the proposed methods for the execution of the Works or otherwise and forming part of the Tender

“Near Miss” means an event that had the potential to cause injury, damage or loss, but which did not do so

“Nominated Officer” means the Authority’s officer who shall be the main point of contact for the Contractor and shall be notified to the Contractor from time to time.

“Payment” means a payment in respect of the Works made pursuant to this **Section**

“Party” means a party to this Contract (and shall include the plural if applicable)

“Price” means the price set out in the Contract Particulars

“Programme of Works” means the programme for the Works provided by the Tenderer in the Tender and forming part of the Tender Documentation

“Project” means the project as set out in the Project Objectives (if any)

“Project Objectives” means the objectives as set out in **Section 3** (if any)

“Project Progress Report” means a report provided by the Contractor detailing the progress of the Works with reference to the Programme of Works

“Purchase Order” means the Purchase Order form issued by the Nominated Officer in connection with the Works

“Regulatory Authority” means the Environment Agency, local authority or any other government department or public body

“RIDDOR” means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (and updated 2013)

“Risk Assessment” means an assessment of the risks associated with the Works

“Site(s)” means the Sites used in connection with the Works and shall include Donor Sites/Drop Sites/Lift Sites/Work Sites (as applicable)

“SSSI” means an area of land designated as a Site of Special Scientific Interest (or the equivalent or similar designation)

“Specification” means the specification and requirements of the Authority as set out in **Section 1** together with such modifications additions and variations as may be made in accordance with this Contract (and shall include all references to “Contract Specification”)

“Standard Conditions” means these conditions

“Target Completion Date” means the date targeted for completion of the Works as set out in the Detailed Conditions and Contract Particulars

“User” means those persons granted rights over the land on which the Works are to be performed (if any) including (but not limited to) shooting and grazing rights

“Tender” means the tender submitted by the Tenderer (and shall include the term “Tender Return” and “Form of Tender”)

“Tenderer” means the person or company submitting a tender

“Tender Documentation” means any documents forming part of this Tender and the supplementary documentation (if any) supplied as part of such documentation

“Unsafe Act” means any act at variance with the Method Statement that may increase the potential for an Accident

“Waste Material” means all packaging, bags, metal tapes, plastic and all other material and rubbish associated with or produced during the course of the Works

'Works' means the works set out and consistent with the Project Objectives and in accordance with the Specification and Tender Documentation, together with any alterations and amendments instructed by the Nominated Officer pursuant to the terms of this Contract

"Works Site" means those areas on which the Works are to be carried out pursuant to the Specification and (if applicable) identified in the Location Maps

"Works Commencement Date" means the date that the Works are to be commenced as set out in the Contract Particulars

"Works Completion Date" means the date on which the Nominated Officer specifies in writing to the Contractor that the Works have been completed to its satisfaction in accordance with this Section

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2. Interpretation

2.1 Words importing the singular tense shall include the plural and vice versa and obligations undertaken by more than one person shall be deemed to have been undertaken jointly and severally.

2.2 A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms save to the extent he is named or identified as a person or class of persons specifically intended to take a benefit under the Contract.

2.3 If any provision of the Contract shall become or shall be declared by any court to be invalid or unenforceable in any way, such invalidity or un-enforceability shall in no way impair or affect any other provision of the Contract, all of which shall remain in full force and effect.

2.4 This Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

2.5 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Contract shall restrict or prejudice the exercise of any other right granted by this Contract or other otherwise available to it.

2.6 Upon termination of the Contract no term other than clauses relating to Confidentiality, Insurance, Defects Liability, Liability of the Contractor (including Liquidated Damages (if any)) and Arbitration shall survive unless expressly provided.

3. Standard Conditions

1. The Nominated Officer

The rights, obligations, functions and powers conferred on the Authority under this Contract shall be exercised by the Nominated Officer.

2. Performance of Contract

- a. The Contractor agrees that at all times it will carry out the Works and perform the Contract in compliance with the following conditions:
 - i. in compliance with the Conditions (and any such modifications authorised under the Conditions);
 - ii. in a manner wholly consistent with the Tender Documentation;
 - iii. to the entire satisfaction of the Nominated Officer; and
 - iv. in any event with all the due skill, care and diligence that would be expected of a qualified competent and experienced person undertaking the Works.
- b. The Contractor shall notify the Nominated Officer as soon as practicable and in any event within 24 hours if the Contractor is unable to carry out any part of the Works or perform any of its obligations under the Contract.

3. Employees

- a. The Contractor shall not engage or employ in the supervision and performance of the Contract any person without the necessary qualifications, skill and experience to perform the duties that they are trained and employed to do.

- b. At the request of the Nominated Officer the Contractor shall remove or procure the removal within a reasonable period (or immediately if required) any person employed by the Contractor or sub-contractor for any reasonable reason (provided the Authority shall not act vexatiously). The Authority shall either at the time or promptly provide to the Contractor written reasons for such request. Such persons shall not be again employed in the performance of Contract without the permission of the Nominated Officer.
- c. The Authority shall not in any circumstances be liable to the Contractor or any of its employees in relation to such action or removal and the Contractor shall fully and promptly indemnify the Authority in respect of any claims brought against it by any such employee.
- d. The Nominated Officer shall have the right if reasonable and on notice to interview any member of the Contractor's staff in connection with the performance of the Contract.
- e. The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the Contractor and shall fully indemnify and keep indemnified the Authority in respect of any liability of the Authority in respect of them and shall ensure that the employment of all staff complies with relevant statutes and regulations.

4. Signage

- a. The Contractor shall not fix signs, notices or advertisements on Sites without the prior written approval of the Nominated Officer.

5. Equipment and Machinery (including vehicles)

- a. The Contractor shall at all times at its own cost provide such Equipment and Machinery as is necessary for the proper performance of the Contract. All Equipment and Machinery must be guarded to current safety standards and left immobilised and secure when unattended. In particular, power take-off shafts on tractor-driven machinery must be fully guarded.
- b. The Contractor shall at all times be fully responsible for licensing, fees, taxes and insurances required in connection with or arising out of the possession or use of the such Equipment and Machinery.
- c. The Contractor shall at its own expense keep all such Equipment and Machinery in good and serviceable repair and maintained in such condition as is commensurate with the proper performance by the Contractor of its obligations under this Contract. The Equipment and Machinery should be used in accordance with the manufacturer's instructions. Operators must be trained and competent. Where industry/Regulatory Authorities or bodies recognise specific standards of competence valid certificates will need to be produced.
- d. The Contractor shall obtain the Authority's written approval to the use and positioning of the Equipment and Machinery prior to the Works Commencement Date and shall use no other Equipment and Machinery without prior approval of the Nominated Officer.
- e. No Equipment or Machinery which is wheeled will be allowed on soft, wet or environmentally sensitive locations without the prior approval of the Nominated Officer.
- f. Any vehicular access indicated on the Location Maps is for Equipment and Machinery approved by the Nominated Officer only. Access for Equipment to environmentally sensitive or SSSI sites or soft or wet areas will only be given during the Contract Period if, in the opinion of the Nominated Officer, this is necessary or desirable. The

Contractor will not permit any movement of Equipment and Machinery on or to such areas without the prior approval of the Nominated Officer.

- g. Any damage arising from any breach of this Clause by the Contractor any sub-contractor or their employees agents or invitees shall be immediately repaired or replaced at the Contractor's expense and to the satisfaction of the Nominated Officer.
- h. The Contractor shall ensure that all highways or other rights of way in the vicinity of the Works used by the Contractor are kept clean of mud and other debris.

6. Environmental Provisions

- a. All Works will be carried out in a manner which conforms to environmental protection legislation and minimises damage to the environment and nature conservation interests. Reference should be made to statutes and codes of practice including (but not limited to):
 - i. The Water Resources Act 1991;
 - ii. The Environmental Protection Act 1990;
 - iii. DEFRA Statutory Guidance "Waste duty of care: code of practice"

<https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice/waste-duty-of-care-code-of-practice>

- iv. Codes of practice for Operations on Sites of Special Scientific Interest, Water Catchment Land, Environment Agency Regulations, Regulations issued by Dept. Of Environment, DEFRA and all current Health and Safety Regulations.
- a. The Contractor must comply with all current legal requirements relating to the storage, handling, use and disposal of hazardous substances (including fuel). In particular the Contractor must comply with:
 - i. the Control of Substances Hazardous to Health Regulations 2002 (COSHH; <https://www.hse.gov.uk/coshh/>)
 - ii. the Control of Pollution (Oil Storage) (England) Regulations 2001;
 - iii. Control of Pesticides Regulations 1986 (as amended 1997).
- b. Plants and animals protected under the Schedules of the Wildlife and Countryside Act 1981 and other statues are not to be harmed or their habitat damaged. Nesting birds are not to be disturbed and are to be reported immediately to the Nominated Officer.
- c. Any public complaints must be immediately reported to the Nominated Officer. The Contractor shall at its own cost promptly deal with any requests by the Nominated Officer in relation to such complaints (including but not limited to investigating the nature and cause of any such complaint).
- d. Site(s) must be left clean and tidy at all times.
- e. Dogs and smoking are not permitted on Site(s).
- f. Fuels may be stored at some of the Sites but only with prior approval from the Nominated Officer. All fuels must be stored in a suitable, secure container according to the COSHH assessment undertaken by the Contractor and provided to the Authority. Fuels must not be located near to any open watercourse. The type of container used to store fuel must be agreed with the Nominated officer prior to the Works Commencement Date.
- g. The Contractor shall ensure that it has at all times on the Sites spill kits for fuels and oils specified in its Method Statements and shall immediately use the same in the event of such spillage in accordance with manufacturer's instructions.
- h. The Contractor shall not damage or permit damage of any areas allocated for Sites or any Access Tracks (if applicable). In the event of any damage, the Contractor shall procure that the same is reinstated to the absolute satisfaction of the Nominated

Officer within 1 month of the final invoice date or by the Works Completion Date, whichever is soonest.

- i. The Contractor is restricted to the specified storage areas notified to it by the Nominated Officer for the unloading and loading of Materials, parking of vehicles, and storage of Materials.
- j. Machinery and Equipment movement on the Sites should be kept to the minimum that might reasonably be expected to complete the Works. Equipment access and egress routes must be agreed with the Nominated Officer prior to the Works Commencement Date. Method Statements must state types of Machinery and Equipment to be used.
- k. The Contractor shall take all precautions to ensure that no pollution arises from the execution of the Works which may result in Contamination either on, in, under or off Site(s). The Contractor shall indemnify the Authority against any costs or damages or claims related to this liability.
- l. It is essential that there is no waste of any Materials at the Sites; the Contractor will be expected to manage operations to minimise waste. All waste produced by the Contractor remains the responsibility of the Contractor. All waste disposal and disposal of Waste Materials must comply with the Waste (England and Wales) Regulations 2011. All containers supplied by the Authority (if any) remain the property of the Authority (subject to any specific provisions otherwise in the Specification).
- m. The Contractor must comply with the Control of Noise at Work Regulations 2005. Additional restrictions may also be applied to prevent noise causing a nuisance to the public.

7. Health and Safety

- a. The Contractor will be required to comply with the Health and Safety at Work Act 1974 and all other regulations made under the Act and all other legislation and regulations relevant to the performance of the Contract. Method Statements should include operational Risk Assessments, copies of which are to be submitted with a tender. Failure to submit RAMS may result in disqualification of the Tender.
- b. Copies of Site Risk Assessments for all Sites used during the Works must be produced to the Nominated Officer before the Works Commencement Date. If a generic Risk Assessment and Method Statement was provided by the Contractor with its Tender Return, the Authority may, at its option require a Site specific Risk Assessment and Method Statement.
- c. The Contractor must at all times adhere to and comply with RAMS.
- d. Health and Safety Plan:
 - ii. The Contractor is to submit a copy of his Health and Safety Policy which is issued to his employees, to the Nominated Officer. This will form part of the site safety plan (“the Site Safety Plan”).
 - iii. The RAMS will form part of the Site Safety Plan. Prior to commencing any Works, the Contractor will submit any alterations to the Method Statements that may be necessary, for the approval of the Nominated Officer. The Contractor’s Health & Safety plan will be subject to the Nominated Officers approval, prior to the Works Commencement Date.
- e. The Contractor must take the lead in ensuring the health and safety of all those involved in the Contract at the Sites.
- f. The Contractor must provide all appropriate clothing and Equipment and ensure that all persons working under his control wear/use the clothing and Equipment as required. This includes high visibility clothing.
- g. The Contractor is responsible for the provision of first-aid cover and facilities for its employees, in accordance with the Health and Safety (First-Aid) Regulations 1981.

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- h. The Authority may instruct the Contractor, or any person working for the Contractor, to suspend work if there is imminent risk of injury to any person.
 - i. The Contractor is responsible for recording any accidents in the Contractor's accident book, in accordance with the Health and Safety at Work Act 1974 (HSW).
 - j. The Contractor is responsible for reporting any notifiable incidents to the Health and Safety Executive, in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). <https://www.hse.gov.uk/riddor/index.htm>
 - k. All records produced under this Clause must be forwarded to the Nominated Officer within 24 hours of completion. These should be submitted in compliance with the Data Protection Act 2018.
 - l. The Contractor must be aware that the Works Sites may be accessible by the public and must take all appropriate precautions to protect these persons and their property, including, if required by the Nominated Officer, the provision of warning notices/signs or barriers.
 - m. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.

 - n. All Equipment and Machinery that could cause environmental damage and/or a health and safety risk to members of the public or land users must be secured overnight to prevent theft or misuse. Contractors are responsible for securing appropriate locations nearby to accommodate their equipment and operations whilst the Works are not being undertaken.
 - o. Services:
 - i. Location of services; The Contractor is to liaise with all relevant Statutory Authorities as to the location of any services that may affect the Works before the Works Commencement Date and comply with their requirements, the requirements of the Authority and relevant Health & Safety Guidance (HSG47 or any replacement from time to time);
 - ii. Excavations:
 - 1. Must be covered when unattended;
 - 2. If over 1.2m deep have trench support (or such comparable measures taken) before persons enter them;
 - 3. If over 1m in depth and in existence for less than 1 week: be cordoned off;
 - 4. If over 1m in depth and in existence for more than 1 week: be barriered.
 - p. Site Safety Considerations
 - i. Ground conditions: Details concerning ground contamination and instability are not available and the Contractor should make its own enquiries in that regard.
 - ii. No representation is made by the Authority as to the existence of Contamination at the Sites or otherwise.
 - iii. The Contractor shall follow the Forestry & Arboriculture Safety & Training Council (FASTCo) Safety Guide.
 - iv. Lifting of heavy objects; the Contractor and employees should follow Manual Handling Operation Regulations 1992 (or any replacement).
 - v. The Contractor shall employ the 'best practical means' as defined in the Control of Pollution Act 1974 to minimise noise and vibration resulting from his operation, and shall have due regard to British Standard B35228 1975, Code of Practice for Noise Control on Construction Sites (or subsequent provisions).
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- vi. The Contractor must take all necessary additional precautions when working alongside roads and comply with Chapter 8 of the Traffic Signs Manual (or any replacement).
 - vii. The Contractor must comply with the Electricity at Work Regulations 1989 (or any replacement).

8. British Standards

- a. These provisions shall apply only where any of the Material is supplied by a Contractor.
- b. Except where specified to the contrary all Materials are to comply with the latest British Standard specification or equivalent national standard of another Member State of the European Community or international standard (whichever is the higher). All Materials shall be fit for purpose.
- c. In the event of the Nominated Officer (whose decision shall be final) not being satisfied that the Materials meet the required standard the Contractor shall comply with the latest British Standard Specification and no claim for additional costs incurred with such compliance will be accepted. Except where specified in the Tender Documentation to the contrary all workmanship is to comply with the latest British Standard Code of Practice.

9. Project Progress Report

- a. The Contractor shall promptly supply the Authority with a Project Progress Report on the dates agreed and notified to the Contractor.

10. Variation of Contract

- a. Without prejudice to any other of the Conditions a Contract Variation shall not be valid or of any effect unless it is agreed pursuant to this clause and confirmed in writing (including e-mail) by the Nominated Officer and the duly authorised agent or representative of the Contractor. Contract Variations for which there is no written confirmation are not authorised and will not be paid for under any circumstances. No other variations to the Contract shall be accepted by the Authority.
- b. The Nominated Officer may request any Contract Variation that are in his opinion necessary or desirable for the most efficient performance of the Contract.
- c. Upon receipt of the request for a Contract Variation the Contractor shall calculate the additional cost (if any) of incorporating the Contract Variation into the Works and shall as soon as practicable provide details of such sum (in writing) to the Authority (“the Contract Variation Sum”) together with an indication of whether the proposed Contract Variation shall cause any delay on the Programme of Works.
- d. If the Contract Variation Sum is agreed by the Authority the Contract Variation shall be recorded in writing and shall form a part of the Works.
- e. Where in the absolute opinion of the Nominated Officer a written Contract Variation is impossible or impractical the Nominated Officer may give such order verbally but shall confirm it in writing to the Contractor as soon as practicable after the event and in any case within 48 hours of the Contract Variation.
- f. No Contract Variation in accordance with this clause shall in any way vitiate or invalidate the Contract but the Contract Variation Sum (if any) shall be taken into account in ascertaining the amount of the Payments (if any).

11. Payment and Invoices

- a. On completion of the Contract (or any phase of the Contract) pursuant to a Purchase Order form and provided that the Contractor shall have performed his duties, obligations and functions under the Contract to the satisfaction of the

Nominated Officer the Contractor may submit to the Nominated Officer an invoice ('Invoice') for the sum due to him in respect of that Purchase Order form.

- b. Within thirty (30) days of the receipt of the Invoice (unless the Nominated Officer shall disagree with the amount claimed or require further information) the Nominated Officer shall (subject to being satisfied as to the performance and standard of the Contractor's work) certify that the Invoice is correct for payment and shall procure payment to the Contractor of the amount so certified.
- c. Provisions for phasing of Payments (if any) shall be included in the Contract.

12. Value Added Tax

- a. All sums payable under this Contract are (unless otherwise stated) exclusive of VAT and other duties or taxes and shall be payable upon production of a valid VAT invoice.

13. CDM Regulations

- a. The Authority and the Contractor acknowledge that they are aware and undertake to the other that in relation to the Works and Site he will duly comply with the CDM Regulations to the extent applicable to the Project.
- b. Without limitation, in accordance with the CDM Regulations:-
 - i. The Authority's main duty is to plan, manage, monitor and coordinate health and safety during pre-construction phase.
 - ii. The Contractor's main duty is to plan, manage, monitor and coordinate the works under their control in a way that ensures the health and safety of anyone it might affect (including members of the public) during the construction phase.
 - iii. The Contractor shall ensure that the Health and Safety Plan is received by the Authority before any works under the Contract is commenced and that any subsequent amendment to it by the Contractor is notified to the Authority;
 - iv. Promptly upon the written request of the Principal Designer (as defined in the CDM Regulations (where appointed)) and in the absence of a Principal Designer being appointed the Authority, the Contractor shall provide (and shall ensure that any sub-contractor through the Contractor provides) such information as the Principal Designer requires for the preparation of the health and safety file.
- c. The Contractor will ensure that all personnel engaged in undertaking the works shall be competent to undertake the Works, in accordance with the CDM Regulations.
- d. The Contractor shall at all times during the subsistence and operation of the Contract provide a sufficient number of personnel having the requisite type and level of qualifications, expertise and experience to operate as team leaders to control, supervise and perform its obligations under the contract to ensure that such performance is carried out efficiently and safely. In particular but without limitation, such personnel shall be required to possess adequate knowledge of the operations to be carried out (including methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) as may be requisite for the satisfactory performance of the Contract and shall notify the Nominated Officer of their names and contact details.
- e. The Contractor shall notify the Nominated Officer of the name, address and telephone number of the person who will be the authorised agent or representative appointed by the Contractor to be in full operational control and who is authorised by the Contractor to receive on behalf of the Contractor directions and instructions from the Nominated Officer. Any instructions given to this representative shall be deemed to have been issued to the Contractor.

14. Insurance

- a. The Contractor shall at all times from and including the Works Commencement Date or Contract Date (whichever is the earlier) effect and maintain in force such policies of insurance with reputable insurers approved by the Authority in respect of its liabilities hereunder and shall fully insure and indemnify the Authority against liability:
 1. To the Authority and to any of their employees;
 2. To the employees of the Contractor;
 3. To the public and to any other person (including for the avoidance of doubt a Landowner or User);
 4. In respect of the replacement of the Works.

in the sum of at least £10,000,000 TEN MILLION POUNDS.

- b. The Contractor shall be liable for and indemnify the Authority against and insure and procure any sub-contractor to insure against any expense, liability, loss, claim, action, or proceedings in respect of any damage whatsoever (whether directly or indirectly) to private property real or personal in so far as such damage arises out of or in the course of or by reason of carrying out the Contract and which is due to any negligence, omission or default of the Contractor or person for whom the sub-contractor is responsible.
- c. The Contractor shall, prior to the Works Commencement Date or Contract Date (whichever is the earlier) and also upon request supply copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this Clause.
- d. In the event that the Contractor is in breach of this Clause the Authority may be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

15. Agency

- a. The Contractor is not and shall not in any circumstance hold itself out as being the agent of the Authority.
- b. The Contractor is not and shall in no circumstance hold itself out as being authorised to enter into any Contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.
- c. The Contractor will not itself or permit any employee or other person engaged by the Contractor to represent themselves as being, servants or agents of the Authority for any purposes whatsoever.

16. Liability of the Contractor

- a. The Contractor hereby indemnifies and shall keep indemnified the Authority from and against any liability to any person whatsoever arising directly or indirectly out of or connected with the performance, non-performance or breach of the Contract or any act neglect default or omission of any employee, agent, servant invitee or visitor of the Contractor or any sub-contractor including, without limitation:
 - i. any and all losses, costs, expenses, (including professional and legal fees) liabilities and damages;
 - ii. any and all proceedings, demands, penalties, statutory charges and fines;
 - iii. death, illness or injury to any third party or for any loss of or damage to any property belonging to any third party and against all losses, costs, expenses, liabilities, damages, claims, demands or causes of action resulting therefrom;

- b. in each case to the extent arising out the Contractor's or any of its sub-contractors' breach or failure in performance of the Contractor's obligations in the Contract or omission whether arising from breach of contract, negligence or default or otherwise, except and to the extent that such losses, costs, expenses, liabilities, damages, claims, demands were wholly and directly caused by the negligence or wilful misconduct of the Authority or its officers, agents or employees.
- c. The Contractor shall indemnify the Authority against all claims liability and actions for or in respect of any damage or injury to property or persons or claims for the infringement of patent rights or copyrights arising from or occasioned by the conduct of the Contractor or his sub-contractor or of any person employed by him or them or arising howsoever from or by the manner in which the Works shall be performed and executed and against all costs and proceedings in respect of any such claim.

17. Materials

- a. If required in the Specification and Contract Objectives, the Contractor must provide its own Equipment suitable for movement and loading of all Materials for the Works.
- b. The Contractor shall be responsible for all Materials for the duration of the Contract and shall indemnify the Authority against loss or damage.
- c. All Materials provided by the Authority will remain the property of the Authority.
- d. Any damage or loss which may occur during the Contract Period in relation to the Works or Materials or Equipment on or before the Works Completion Date or to any Materials implements or property whatsoever of the Authority which may at any time for the purpose of the Works be in the custody or use of the Contractor or sub-contractor which shall arise from negligence of the Contractor or theft, spoiling, decay, waste, wind, rain or fire or criminal damage shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Nominated Officer.

18. Force Majeure

- a. Neither party shall be liable for any failure to fulfil or delay in fulfilling its obligations under the Contract (other than an obligation to pay monies due) where such delay or failure is due to a Force Majeure Event Provided That:
 - i. the party so affected could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, it ought reasonably to have taken but it did not take; and
 - ii. the party so affected has taken all steps as are reasonably necessary to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Contract in any other way that is reasonably practicable; and
 - iii. the party so affected shall immediately notify the other in writing of the existence of the Force Majeure Event and of its anticipated duration.
- b. If the Contractor is the party affected by the Force Majeure Event, the Authority shall be relieved of its liability to make any payments to the Contractor for the duration of the Force Majeure Event and shall be entitled to obtain services the same as or similar to the Works from any third party during such period that the Force Majeure Event continues and the Contractor shall give all assistance and information necessary to such third party to enable such third party to fulfil the obligations of the Contractor under the Contract.
- c. For the avoidance of doubt, Covid-19 shall not be treated as a Force Majeure Event.

19. Defects Liability Provisions

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- a. The Authority shall have the right at any time to inspect the progress of the Works and may make representations to the Contractor following any such inspection.
 - b. The Contractor shall comply with the Nominated Officers directions following such inspections (insofar as they do not constitute Contract Variations).
 - c. Upon the completion of the Works the Contractor shall notify the Nominated Officer and the Nominated Officer shall in its absolute discretion notify that the Works have been completed (“the Completion Certificate”).
 - d. In the event that the Nominated Officer cannot so notify the Contractor shall at its own cost carry out such works as shall be required to enable the Nominated Officer to confirm that the Works have been completed to its entire satisfaction.
 - e. The Contractor shall procure that all defects in the Works notified to it during the Defects Liability Period by the Nominated Officer shall be promptly and at its own cost made good to the Nominated Officer’s entire satisfaction.

20. Bribery and Corruption

- a. The Contractor warrants and undertakes to the Authority that:
 - i. it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Anti-Bribery Law”);
 - ii. it has not and shall not give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
 - iii. it will comply with the Authority’s anti-bribery policy as may be amended from time to time, a copy of which will be provided to Contractor on written request;
 - iv. it will procure that any person who performs or has performed services for or on its behalf (“Associated Person”) in connection with this Contract complies with this Clause;
 - v. it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this Clause;
 - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
 - vii. from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under this Clause and will provide any information reasonably requested by the Authority in support of such compliance;
 - viii. it shall notify the Authority as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- b. Breach of any undertakings in this clause shall be deemed to be a material breach of the Contract for the purposes of **Clause 20 (Termination)**.

21. Termination

- a. The Authority shall be entitled immediately upon the happening of any of the following events to terminate this Contract by the service of a notice (a “Termination Notice”), such events being:
 - i. The failure to materially perform the obligations under **Clause 2 (Performance)**;
 - ii. Any material breach by the Contractor of any other provision of the Contract;
 - iii. The Contractor having failed to perform a material part of the Contract for a period of 7 consecutive days;

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- iv. The Contractor suffering a legal claim against its possessions or if the Contractor consists of one or more individual, any such individual dying, entering into a composition or arrangement for the benefit of its creditors or having a receiving order in bankruptcy made against it or, if the Contractor consists of a body corporate, the Contractor having a Receiver or a Receiver and a Manager appointed or being the subject of a resolution or order for winding up (save for an amalgamation or reconstruction of a limited company);
 - v. Any governmental or other licence, consent or authority required by the Contractor to enable it to perform any of its obligations under the Contract ceases to be in full force and effect or at any time it becomes unlawful for the Contractor to perform any of its obligations thereunder;
 - vi. The continuation of a Force Majeure Event for a period of time which in the opinion of the Nominated Officer materially affects or prejudices compliance by the Contractor of its obligations to the Authority or is likely to do so, preventing the Contractor from fulfilling its obligations under the Contract for a period of 45 days or more or the occurrence of a Force Majeure Event which in the opinion of the Nominated Officer is substantially unlikely to cease to be a Force Majeure Event for the remainder of the Contract Period
 - vii. The withdrawal of the Authority's funding for a Project;
 - viii. The re-organisation (and/or abolition) of the Authority to the extent that the licence consent or authority required by it to enable to perform any of its obligations under the Contract ceases to be in full force and effect or at any time it becomes unlawful for the Authority to perform any of its obligations thereunder.
- b. A Termination Notice shall be in writing and may be given by the Nominated Officer on behalf of the Authority.
 - c. Upon receipt of a Termination Notice, in addition to such consequences as are set out in other provisions of the Contract:
 - i. The Contractor shall forthwith cease to perform of the Works;
 - ii. (Save where a Termination Notice is served pursuant to an event within the Authority's control) the Contractor shall fully and promptly indemnify the Authority in respect of:
 - a. all losses damages and costs (including professional costs) and expenses incurred or suffered by the Authority from such termination; and
 - b. the cost of causing to be performed such part of the Contract as would be performed by the Contractor during the remainder of the Contract Period. The Authority shall be at liberty to procure such performance by any persons (whether or not employees of the Authority) as the Authority shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having such Works performed.
 - iii. The Authority shall be under no obligation to make any further Payments to the Contractor and shall be entitled to retain any Payments which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Authority all sums due under this Contract or to deduct from it any sum due from the Contractor to the Authority under this Contract.
 - iv. The Authority shall not be liable for any claim demands costs expenses losses incurred or suffered by the Contractor (or any sub-contractor)

resulting (either directly or indirectly) from the serving of a Termination Notice.

- v. The Contractor shall immediately give up possession of the Site(s) in accordance with these Conditions.

22. Contract Suspension

- a. In the event that a Termination Event occurs the Authority may at its option on written notice to the Contractor suspend this Contract for such reasonable period as the Authority shall notify the Contractor (the "Contract Suspension Period") and the Authority shall have the right to instruct another contractor to carry out the Works during the Contract Suspension Period and the cost of the Authority in relation to such suspension shall be deducted from the Price.
- b. The exercise of the rights in this Clause above shall be without prejudice to any antecedent claim by the Authority and shall not prohibit the Authority from serving a Termination Notice at any time.

23. Assignment

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract or any part thereof and shall give written notice of any assignment or transfer to the Contractor.
- b. The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or there under without the written consent of the Authority.
- c. The Contractor shall not sub-let the whole or any part of the Works without the written consent of the Nominated Officer together with any conditions. If such consent is given it shall not relieve the Contractor from liability or obligation under the Contract and it shall be responsible for the acts defaults omissions and neglects of any sub-contractor, its agents, servants or workmen.

24. Gangmasters (Licensing) Act 2004 ("the Act")

- a. If the Works are subject to the Act (and if in doubt the Contractor shall liaise with the Nominated Officer) or (at the direction of the Authority) the Contractor shall obtain and provide a full copy of its gangmasters licence pursuant to the Act ("the Licence").
- b. Where the Contractor is required to obtain a Licence, it shall ensure that such licence is valid and maintained and shall notify the Authority immediately if such licence is revoked or modified.

25. Title

- a. All items of whatever nature and any other artefacts excavated or found during the execution of the Works shall remain the property of the Landowner, and the Contractor will have no right of ownership. The Nominated Officer must be immediately notified of the location of any artefacts found during the course of the Works and the Contractor shall comply with all instructions issued by the Nominated Officer.

26. Notices

- a. No notice to be served upon the Authority shall be valid or effective unless it is sent by prepaid post or delivered by hand to the Authority at the address specified below or to such other address as the Nominated Officer may notify the Contractor in writing.

Authority Solicitor
Peak District National Park Authority
Aldern House
Baslow Road

Bakewell
Derbyshire
DE45 IAE

Any notice to be served upon the Contractor shall be valid and effective if it is sent by prepaid post or delivered by hand to the registered principal place of business or to the address shown in this Contract if different or is delivered by hand to a Director, Company Secretary, or other responsible representative of the Contractor.

27. Arbitration

- a. All disputes under this Contract shall be settled by arbitration under the Arbitration Act 1996 (or any statutory modification or re-enactment thereof for the time being in force) by a single Arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Arbitrators.
- b. Any award or decision of such Arbitrator shall be final and binding on the Parties.
- c. Unless the Contract shall have already been determined or abandoned the Contractor shall in every case continue to proceed with the Works with all due diligence and the Contractor and the Authority shall all give effect to every such decision of the Nominated Officer unless and until the same shall be revised by an arbitrator as hereinafter provided.

28. Observation of Statutory Requirements

The Contractor shall at all times observe and comply with all the relevant Acts of Parliament, regulations and codes of practice (the Statutory Requirements) relating to the performance of the Works including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Works (where the same are within the power and control of the Contractor) and the Contractor shall indemnify the Authority accordingly.

29. Stamp Duty and Professional Fees

Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender Documentation and any formal Contract documents arising therefrom.

30. Waiver

Failure by the Authority at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Authority to enforce any provision in accordance with these conditions.

31. Whole Contract

The Contract (which includes the Tender Documentation) constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the parties with respect thereto.

32. Warranty

The Contractor and the Authority warrant their power to enter into this Contract and have obtained all necessary approvals to do so.

33. Rights and Duties Reserved

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Authority's rights or powers duties and obligations in the exercise of its functions as a local authority for the enforcement of or pursuance of any enactment by-law or regulation for the time being in force.

34. Confidentiality and Data Protection

- a. Each Party will procure that all confidential information which may already have come into the ownership, possession or control it or of a subsidiary prior to the

execution of the Contract provided by the Contractor, or which may at any time hereafter until termination hereof come into the ownership, possession, or control of either of them relating to the other Party or its operation or management, or otherwise in connection with or in anticipation of the performance of the Contract (hereinafter referred to as “the Confidential Information”), shall strictly:-

- i. not be used for any purpose other than the performance of the Contract;
 - ii. not to be disclosed during the continuance of the Contract to any third party including for the avoidance of doubt any company, organisation or individual whatsoever employed by the Contractor now or at any time in the future; and
 - iii. not after termination be used for any purpose whatever or disclosed to any third party.
- b. The receiving Party shall inform the disclosing Party immediately if it comes to the notice of the receiving Party that any confidential information has been improperly disclosed or misused.
 - c. The above obligations shall cease to apply to any particular piece of Confidential Information once it becomes public knowledge other than through any act or default of the receiving Party or any person acting or employed by them or acting on their behalf.
 - d. Upon termination hereof, or at the request of the Authority the receiving Party shall procure that all documents and other written material (including material on disks and tape) containing Confidential Information shall be returned (together with all copies thereof) to the disclosing Party.
 - e. The Contractor and Authority will comply with their respective obligations under the General Data Protection Regulations and the Data Protection Act 2018.
 - f. To the extent that the contractor is a data processor under the contract, of data in respect of which the purchaser is the data controller, it is agreed that
 - i. The Contractor may only use the data on the instruction of the purchaser. The data cannot be used for the contractor's own purposes;
 - ii. The Contractor shall, upon request, demonstrate to the reasonable satisfaction of the Authority the security and related organisational measures operated by the supplier and as applied to the Contract;
 - iii. The Contractor shall ensure the written agreement of any sub-contractor to observe the same obligations to the purchaser as outlined above.

35. Freedom of Information and Transparency

- a. The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (“FOIA”), the Environmental Information Regulations 2004 (“EIR”) and the Local Government Transparency Code 2014 (“the Code”). The Contractor shall assist and co-operate with the Authority as necessary to comply with these requirements and acknowledge that the Authority may be required to disclose information pursuant to the FOIA, the EIR or the Code. The Contractor shall provide all necessary assistance reasonably requested to enable the Authority to respond to a request for information within the time for compliance and permit the Authority to inspect such records as requested from time to time.
- b. The Contractor acknowledges that all payments over £250 are published in the public domain in accordance with guidelines issued by the Department of Communities and Local Government.

36. Copyright

- a. The copyright, design right, trademark or patent or other form of intellectual property in all data, reports, documents, drawings and designs (whether in paper or electronic format) created by the Contractor or the Authority in connection with

the Works shall be vested in the Authority. The use or disclosure of any such report for any purpose at any time is strictly prohibited except with the explicit written consent of the Authority.

37. Contract Period

- a. This Contract shall extend for the Contract Period and shall not be terminable by either party within that period save in accordance with these Conditions.
- b. Notwithstanding the Contractor's obligations to maintain a capability to carry out the Works under the Contract or the Contractor's obligations generally, the Authority does not guarantee any level or volume of work or Purchase Order forms in respect of the Works at any time during the Contract Period.

38. Sub-contracting

- a. The Authority's prior written approval must be obtained before any part of the Works is sub-contracted. The Authority reserves the right to refuse such approval as its absolute discretion.
- b. An approved sub-contractor must give a direct warranty and undertaking to the Authority but the Tenderer will nonetheless remain primarily liable for carrying out and completing the Works.

39. Ancient Monuments and Archaeological Areas

- a. Unauthorised works and wilful or reckless damage to Scheduled Monuments are offences under Sections 2 and 28 of the Ancient Monuments and Archaeological Areas (as amended) Act 1979 ("the 1979 Act").
- b. The Contractor (and any subcontractor) must have particular regard to the following statement provided by English Heritage:
"Any person...operating or causing to be operated mechanised cutting equipment on a Scheduled Monument in England containing upstanding stone features would potentially place themselves at risk of prosecution under the above Act given the reckless nature of such action in the clear knowledge of the following facts:-
 - i. Scheduled Monuments are protected under the 1979 Act and exist at numerous locations across England.
 - ii. The locations of Scheduled Monuments can be readily established by correspondence with English Heritage.
 - iii. The practise of mechanised cutting of heather when conducted over a cairnfield or other upstanding stone features is likely to cause damage to such features which may comprise offences under Sections 2 and 28 of the 1979 Act
- c. The Authority shall, wherever possible provide details of any Scheduled Monuments at any of the Sites however, this does not obviate the need for the Contractor to carry out its own searches and enquiries including (but not limited to);
 - i. Consultation of the National Heritage List for England at <https://historicengland.org.uk/listing/the-list/> and
 - ii. Consultation of the Peak District National Park Authority archaeological department.
- d. Any Contractor (and any subcontractors) shall provide a copy of all such searches, enquiries and associated consents to the Nominated Officer.
- e. The Contractor (and any subcontractors) shall comply with all conditions requirements and consents required by English Heritage and Peak District National Park (whether supplied by the Authority or otherwise) relating to the Works at the Sites and shall notify the Authority of and fully indemnify the Authority against all

losses costs claims and demands arising from any breach of such conditions consents or requirements or any breach of the 1979 Act.

40. Conditions

- a. In the event of any contradiction between the Standard Conditions and the Detailed Conditions then the Detailed Conditions shall prevail.
- b. The Conditions and all other conditions contained in the Tender Documentation shall take precedence over all other terms and conditions provided by a Contractor (including any terms and conditions which a Contractor purports to imply under any confirmation of order, specification or other document).
- c. No terms and conditions endorsed on, delivered with or contained in a confirmation of order, specification or other document provided by the Contractor shall form part of the Contract.

41. Equality

- a. The Authority is subject to the Public Sector Equality Duty which requires us, in our work and decision making, have due regard to the need to:
 - i. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - ii. Advance equality of opportunity between people who share a protected characteristic and those who do not;
 - iii. Foster good relations between people who share a protected characteristic and those who do not.
- b. The Authority's [Equalities Policy and Action Plan](#) is available on its website. The Supplier shall not unlawfully discriminate in any way which is in conflict with that policy, and shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

42. COVID-19

- a. The Contractor shall at all times comply with the current Covid-19 operating procedure guidance appropriate for the Works.
- b. A breach of this clause shall be treated as material breach of contract.
- c. Any costs of impact on the programme of works resulting from Covid-19 (save for any resulting from a breach of this provision) shall be included in the Price and for the avoidance of doubt, shall not be treated as a Force Majeure Event.

Appendix 1: Holcombe Moor stone dams Package 1

Appendix 2: Big Moor stone dams Package 2

Appendix 3: Rivelin works Package 3

Appendix 4: Works Specifications

Appendix 5: Form of Tender

Appended as a separate word document. Please fill in and return with your tender.

Appendix 6: Tender Questionnaire

Appended as a separate word document. Please fill in and return with your tender

Appendix 7: Non – Collusive Tendering Certificate

Appended as a separate word document. Please fill in and return with your tender