



MOORS FOR THE FUTURE PARTNERSHIP

Invitation to Tender for Cutting and Flailing

MFF 29 2016-2020 Cutting and Flailing

Tender Return Date: 5pm, Monday 07th November 2016

SECTION 1

CONTRACT OBJECTIVES, WORKS SPECIFICATION AND DETAILED CONDITIONS

PART A

1. CONTRACT OBJECTIVES

The objective of this Contract is to cut or flail vegetation on restoration works sites around the Peak District and South Pennines SAC, in order to construct fire breaks, reduce the dominance of particular species and/or facilitate the re-introduction of new species by opening up the sward.

The Works will include the following sub-objectives:

- a. Production of all health and safety material for the delivery of the Works.
- b. Adherence to all health and safety material to ensure safe delivery of the Works.
- c. Clear communication with the Authority prior to and during the course of the Works, including Site access.
- d. Provision of skilled manpower, suitable vehicles, Machinery and Equipment necessary to deliver the Works at each Site.
- e. Unloading of Machinery and tracking Machinery across open moorland to the Work Sites.
- f. The cutting, flailing and/or windrowing of vegetation at the Work Site(s) to the standard specified by the Authority.
- g. The provision of GPS records of the location(s) of cut/flailed areas to the Authority.

2. FRAMEWORK AGREEMENT:

This Invitation to Tender is for a Framework Agreement for the period 7th November 2016 to 31st March 2020 ("the Framework Period"). This means that, after evaluation of the Tenderers' Forms of Tenders, the Authority will appoint Framework Contractors to carry out the Works at different Sites throughout the Framework Period. The framework process is set out in Section 2 (Instructions on Submitting a Tender).

PART B

WORKS SPECIFICATION

1. PROGRAMME OF WORKS

- a. The Contractor must adhere to the Programme of Works as determined by the Nominated Officer having due regard to Landowner consents, Restricted Dates and other constraints. Any delay may also have an impact on other Authority projects and contracts. In the event that the Contractor is in breach of this provision the Authority reserves the right to claim Liquidated Damages.

2. SPECIFICATION OF WORKS

- a. Flailing for firebreaks
 - i. To be carried out down to no lower than 3cm above ground level on average.
 - ii. Some scalping is acceptable but the soil surface must not be significantly disturbed.
 - iii. Cut Material to be collected or piled up in windrows approximately 4 metres apart to allow it to break down (as specified by the Nominated Officer).
- b. Flailing to diversify sward
 - i. To be carried out at approximately ground level.
 - ii. Must disturb the soil to allow successful germination following subsequent seeding.
 - iii. Cut Material to be collected or left as an even layer mixed with the disturbed soil, which will give a suitable seed bed for seeding (as specified by the Nominated Officer). All Material must be well chopped.
- c. Vegetation types
 - i. Cottongrass-dominant: may be wet (requiring a low ground pressure Machine), but likely to be easy to cut
 - ii. Heather-dominant: probably drier ground; grips or gullies may be present.
 - iii. Molinia-dominant: likely to be wet, with tough tussocks of molinia.

3. PROVISION OF A GPS RECORD OF THE LOCATION OF CUT/FLAILED TRACKS

- a. The location of each line that is cut or flailed must be recorded with a GPS unit and the GIS information must be promptly given to the Nominated Officer. The GIS information required is listed below:
 - i. MapInfo Tab file or GPX file that includes the OS coordinates of all cut/flailed tracks, and the date they were cut/flailed.

PART C

DETAILED CONDITIONS

1. Timing of Project Delivery:

- a. Target Completion Date: as set out in each Purchase Order
- b. This contract forms part of a larger works programme for the delivery of the Project. The Contractor shall comply with the reasonable requests of the Nominated Officer regarding the co-ordination of the delivery of these contracts.
- c. The Nominated Officer will issue the Contractor with instructions to carry out phases of the Works at the Works Commencement Date and during the Contract Period, having due regard to the Programme of Works and any remaining period available to carry out the Works. The Contractor will be issued with a Purchase Order for the relevant phase of Works together with an instruction as to the number of and location of cuts to be completed and the Target Completion Date for such phase. Such phased Works must be completed by the relevant Target Completion Date in accordance with the Standard Conditions.
- d. If any of the timescales referred to in the Purchase Order or Contract are not achieved in the absolute opinion of the Nominated Officer (save in case of Force Majeure) the Authority shall treat such breach as a material breach and shall at its option terminate or suspend the Contract or require the payment of Liquidated Damages in accordance with this Section.

2. Price:

- a. The rates set out in the Form of Tender and Itemised Costs Years 1 and 2 (“the Price”) shall be the fixed for Years 1 and 2 of the Framework Period. Save for agreed Contract Variations, the Price shall not be increased. Itemised Costs for the remainder of the Framework Period are indicative only.
- b. The Tenderer is asked to provide a day rate (Price) for a Machine plus crew for each of the three vegetation types (cottongrass-dominant, heather-dominant and molinia-dominant) along with an estimate of the number of hectares expected to be cut in a day.

3. Quality Checks and Site Visits

- a. The Nominated Officer will carry out an agreed number of site visits to the Works to carry out quality and schedule monitoring.
- b. The exact number of visits will be agreed at the pre-start meeting.
- c. If the Nominated Officer is required to make any additional sites visits due to failure by the Contractor to meet the required quality or schedule associated with the Works then the Contractor shall be liable for such costs as the Authority may reasonably incur.

4. Works Sites and Access Routes:

- a. The Works Sites include remote moorland at high altitude and may include waterlogged areas, deep gullies and stream channels. There is the potential of overturning Machinery and adverse weather conditions. Tender evaluations will place significant emphasis on the Contractors’ experience of working in such situations. The development of full site and work based Risk Assessments and the identification of suitable working practices, together with a thorough comprehension of the health and safety issues affecting & impacting on multiple user groups, visitors and contractors will directly influence the Contractor’s working methods and efficiency.
- b. The Work Sites are in Open Access land (pursuant to CRoW Act 2000) so the Contractor must be aware of, have due regard for and take appropriate action to ensure the safety and access of members of the public. Equipment and Machinery will be left unattended or remain on the Work Sites overnight at the Contractors own risk. The Contractor is responsible for sourcing appropriate locations nearby to accommodate their Equipment and Machinery and operatives whilst the Works are not being undertaken.

- c. The Contractor is responsible for transporting all Materials and Equipment and Machinery to the Works Sites.
- d. Site access for Vehicles and Machinery will be determined for each Site by the Nominated Officer.
- e. Fence sections and stiles and gates that have been cut or removed to gain access must be replaced by the Contractor with an appropriate length of new wire and posts and a new gate if requested by the Nominated Officer.

5. Tracking of Machinery:

- a. The Contractor must provide their own vehicle(s) and Machinery necessary for the Works. No access to the Works Site is permitted to vehicles with ground pressures higher than 3 psi. The Contractor must specify the details of any vehicle and Equipment they intend to use during the course of the Works in the table provided in this Section.
- b. When tracking Machinery within the Works Site the Contractor must seek to minimise damage to the ground surface, and adjacent features (walls, pasture etc.).
- c. The Contractor will detail in their Method Statements the means for dealing with excessively wet and boggy ground when operating Machinery at the Works Sites having regard to likely ground conditions.

6. Environmental Requirements:

- a. All works to be undertaken by the Contractor must comply with the 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.
- b. The Contractor shall not damage or permit damage of any areas allocated for Works Site or Access Track. 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.
- c. Vehicle and Equipment movement on the Works Site should be kept to the minimum that might reasonably be expected to complete the Works. Vehicle and 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.

7. Movement and Use of Machinery

- a. Powered Machinery and Equipment that the Contractor intends to use during the Works Period shall consist only of what has been agreed in advance by the Nominated Officer. No other powered Machinery or Equipment of any nature (including vehicles) are permitted to be used during the Works
- b. No quad bikes or similar vehicles are to be allowed on Site without the prior written approval of the Nominated Officer.
- c. The Works Sites may include (but are not limited to) waterlogged areas, deep gullies and stream channels.
- d. When transporting Machinery and Equipment to and from the Works Sites and within the Works Sites the Contractor will seek to minimise damage to the ground surface, and adjacent features (walls, pasture etc).
- e. If ground conditions deteriorate to the point where damage is occurring, the Contractor must immediately inform the Nominated Officer and halt work as necessary.

8. Health and Safety

- a. The Contractor will be responsible for Health and Safety during the course of the Contract.
- b. The Contractor's Health and Safety Policy (for companies employing 5 or more people) must be submitted with the Tender. This will form part of the site safety plan ("the Site Safety Plan").
- c. Method Statements must be submitted with the Tender and will need to be approved by the Nominated Officer. For companies employing 5 or more people, Method Statements should include operational Risks Assessments. Risk Assessments can be generic (ie

not site-specific) at the Tender stage. Failure to submit Method Statements and (if applicable) Risk Assessments may result in the disqualification of the Tender.

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

9. Downtime Expenses

- a. 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 caused by negligence of the Authority).
- b. 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.

10. Restricted Dates

- a. Works may be restricted (or prohibited) on the instructions of the Nominated Officer on the Restricted Dates.
- b. The Contractor will be informed of the Restricted Dates at the pre-contract meeting.
- c. No Works are permitted on the Restricted Dates. Any breach of this Clause shall be treated as a material breach.

11. Liquidated Damages

- a. 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.
- b. In the event that the Works are not completed by the Target Completion Date in any Purchase Order or 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 costs as the Authority may reasonably incur (including but not limited to the costs of the Authority suspending this 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.

12. Retention

- a. Payments will be made for the amount of work completed, according to the rates and prices submitted in the Tender. A retention of 5% ("the Retention Fund") of the Price will be made until the Completion Certificate is issued when 2.5% will be released. The balance of Retention Fund will be paid at the end of the Defects Liability Period.

13. Defects Liability

- a. The Defects Liability Period in respect of the Works shall be two years from the Works Completion Date.
- b. The Authority has the right at any time during the Works, and the Defects Liability Period, to inspect the Works, make representations and require remediation in accordance with the Standard Conditions.

14. Materials

- a. All Materials provided by the Authority will remain the property of the Authority.

15. Insurance

- a. The Contractor (and any sub-contractors) shall be required to maintain and provide evidence of insurance in accordance with the Standard Conditions in the sum of **£5,000,000 (five million pounds)**.

16. Site Foreman

- a. 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.

17. Utilities and Services

- a. 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.
- b. 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).
- c. 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.
- d. 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.

18. Site Repair

- a. The Site must be returned to as close to pre-works condition as practically possible at the end of the Works including (but not limited to):
 - i. Turves lifted by the turning and movement of tracked and / or wheeled machinery must be replaced and distributed to cover the damaged area.
 - ii. Ruts and track lines that are likely to result in erosion should be blocked or filled in. Works to rectify these should be discussed with the Nominated Officer prior to being undertaken.
 - iii. Fence sections, stiles or gates that have been cut or removed to gain access should be replaced with an appropriate length of new wire and posts.
 - iv. Other works to restore and rectify damage to the site as directed by the Nominated Officer.

19. Carbon Audit

- a. As part of the MoorLIFE 2020 project, Moors for the Future Partnership are required to collect information to calculate the carbon footprint of the project.
- b. Details about journeys made by all Contractor Vehicles for the duration of the Works (staff travel, tractors, deliveries etc.) will need to be recorded by the Contractor and provided to the Authority.
- c. Details of this data collection and forms to fill in will be issued to the Contractor upon award of Contract.

20. Socio-Economic Impact

- a. As part of the MoorLIFE 2020 project, monitoring the socio-economic impacts of the project is a compulsory action. Contractors may be required to collect and provide information as part of their contract and project delivery.
- b. Direct socio-economic impacts of the project on (local) businesses: The Authority will record data on the enterprises that are awarded contracts to establish the impact of the project on the (local) business community.
- c. The following information may be requested from the Contractor:
 - i. Type/status of business (e.g. sole trader, partnership, limited company, social enterprise, cooperative, charity).
 - ii. Business size (number of employees and types of contracts).

- iii. Number of years trading.
- iv. Registered address.
- v. Number of people employed by contractors and partners in the delivery of the project actions.
- vi. Number of years employed by the enterprise at start of contract.
- vii. The length and type of employment contracts of people working on the contract.
- viii. De- personalised information on their home addresses (first three digits of postcode).

21. MoorLIFE 2020

- a. This Contract relates to a number of projects including for the purposes of the Moor LIFE project (LIFE14/NAT/UK/000070) "MoorLIFE 2020".

22. Invoices

- a. Where requested on the Purchase Order the Contractor must include the wording "This Contract relates to a number of projects including for the purposes of the Moor LIFE project (LIFE14/NAT/UK/000070) "MoorLIFE 2020" on their Invoice as part of the MoorLIFE 2020 Project funding. Failure to do so will result in a request by the Authority for a re-submitted invoice with the correct reference wording on it. This may delay payment.
- b. 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.
- c. 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.

23. Communications and Marketing

- a. Any works for the Authority may be included in promotional material released by the Authority.
- b. 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.
- c. The Authority may include, but reserves the right not to, credit the Contractor in any publicity they release.
- d. 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.
- e. The consent given by this Clause refers to all forms of media including social media.
- f. 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.
- g. Any unauthorised use of Authority works for the Contractors own publicity will assessed for suitability shall be removed on request.

PART D

PROGRAMME OF WORKS AND ITEMISED COSTS

General Items and Preliminaries				
1	Work required PER SITE	Unit	Rate per unit £	Total Cost (Ex VAT) £
	Contractual requirements			
1.1	Insurance of the Works	item		
1.2	Insurance against damage to persons or property (£5,000,000.00)	item		
1.3	Preparation of Pre-Tender Method Statements, Operational Risk Assessments, Safety Policy	item		
1.4	Preparation of Site Risk Assessments, COSHH Assessments	item		
1.5	Provision of welfare facilities for Contractor employees Details of facilities to be provided:			
1.6	Provision of materials within the Health & Safety Plan Details of materials to be provided:			
1.7	Provision of Carbon Audit data and/or GPS information (See Section 1 Part C)			
1.8	Provision of Socio-Economic Impact data collection (See Section 1 Part C)			
1.9	Any additional items required to meet contractual obligations Details of items to be provided:			
	TOTAL CARRIED FORWARD TO COLLECTION:		TOTAL:	

Day rates				
2	Work required per COTTONGRASS-DOMINANT site		Cost per day £	Area cut per day hectares
	Contractual requirements			
2.1	Flailing 3cm above ground level; soil not disturbed significantly	machine + crew		
2.2	Flailing at ground level; soil disturbed	machine + crew		
2.3	Windrowing of cut material	machine + crew		

Day rates				
3	Work required per HEATHER-DOMINANT site		Cost per day £	Area cut per day hectares
	Contractual requirements			
3.1	Flailing 3cm above ground level; soil not disturbed significantly	machine + crew		
3.2	Flailing at ground level; soil disturbed	machine + crew		
3.3	Windrowing of cut material	machine + crew		

Day rates				
4	Work required per MOLINIA-DOMINANT site		Cost per day £	Area cut per day hectares
	Contractual requirements			
4.1	Flailing 3cm above ground level; soil not disturbed significantly	machine + crew		
4.2	Flailing at ground level; soil disturbed	machine + crew		
4.3	Windrowing of cut material	machine + crew		

SECTION 2: INSTRUCTIONS ON SUBMITTING A TENDER (WORKS)

Tenders should be submitted in accordance with the following instructions.

1. Invitation to Tender

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

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. However, the Authority reserves the right to split the award of the Works into packages.

4. Framework Agreement

4.1. This Invitation to Tender is for a Framework Agreement. This means that, after evaluation of Forms of Tenders, the Authority will appoint Framework Contractors to perform the Works in whole or in part throughout the Framework Period on the basis of the Tender Documentation and the Form of Tender.

4.2. Tenderers will be notified of their selection as Framework Contractors by the Nominated Officer.

4.3. Framework process:

4.3.1. The Authority shall be entitled from time to time to request the performance of any Works from the Framework Contractor as set out in the request and the timescale for a response to the request (acting reasonably);

4.3.2. Where the Price for the Works is confirmed in the Form of Tender, the Framework Contractor shall respond to the request by either:

4.3.2.1. Confirming that it is not able to perform the Works; or

4.3.2.2. Confirming that the Price for the Works in accordance with Framework Contractor's Form of Tender and Itemised Costs;

4.3.3. If the Price is acceptable to the Authority, the Authority and the Framework Contractor shall enter into a Contract for the Works for the Price in the Form of the Contract annexed to the Invitation to Tender.

4.3.4. Where the Price is not known, the Authority will hold a mini-competition between at least three Framework Contractors in accordance with the Authority's Standing Orders. These Framework Contractors will be provided with a Works Plan for the relevant Works Site including information on the Works Sites, quantities of Materials and access routes and distances. The Framework Contractors shall respond to the request by either:

4.3.4.1. Confirming that it is not able to perform the Works; or

4.3.4.2. Providing a Price for the Works;

Within the requested timescale.

- 4.3.5. The Authority shall evaluate in accordance with this Section and shall confirm any additional evaluation criteria or weighting at the time of the mini-competition.
- 4.3.6. Following the evaluation, the Authority shall notify the Framework Contractor it has been successful and the Framework Contractor shall enter into a Contract for the Works for the Price tendered.
- 4.4. Either party may require the removal of the Framework Contractor from the Framework Agreement at any time by giving written notice to the other.
- 4.5. On the termination of the Framework Agreement with a Framework Contractor, each contract with a Framework Contractor in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such contract, unless earlier termination in accordance with the terms of such Contract.

5. Tendering procedure

- 5.1. **THE DEADLINE FOR RECEIPT OF TENDERS IS 5PM ON THE TENDER RETURN DATE.**
- 5.2. No tender received after the specified time on the Tender Return Date shall be considered. Any such tender shall be returned promptly to the Tenderer by the Chief Financial Officer who may open the tender only to ascertain the name and address of the Tenderer.
- 5.3. The Tender shall be made on the Form of Tender. It must be accompanied by the following information:
 - 5.3.1. Organisation (including Risks Assessments and Method Statements);
 - 5.3.2. Analysis of resources;
 - 5.3.3. Itemised Costs;
 - 5.3.4. Details of any part of the Works to be sub-contracted;
 - 5.3.5. Copies of all Insurance Certificates, for the Tenderer and any sub-contractors;
 - 5.3.6. Details of suppliers (if applicable);
 - 5.3.7. Any other information requested in the Section 1 (Specification and Detailed Conditions).
- 5.4. The Form of Tender must be signed, where the Tenderer is an individual, by that individual. Where the Tenderer is a partnership, by an authorised partner. Where the Tenderer is a company, by at least one director or by a director and company secretary.
- 5.5. No tender will be deemed to be received unless it is in an envelope which bears no name or mark indicating the sender. If delivered by hand a receipt will be issued.
- 5.6. Tenders must be delivered on weekdays between the hours of 9.00 am and 5.00 pm and marked for the attention of the Chief Finance Officer as follows:

TENDER
F.A.O The Chief Financial Officer
Peak District National Park Authority
Aldern House
Baslow Road
Bakewell
Derbyshire
DE45 1AE.

6. Basis of Tender

- 6.1. The Tender shall show the Tendered sum for the actual Works and the VAT separately.
- 6.2. The Price must include value of all of the Works and Materials (if applicable) supplied by the Tenderer as part 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 Tender Documentation.
- 6.3. The value of the Contract, based on the Price and the Itemised Costs will be agreed in writing prior to Works Commencement Date.

7. Sub-contracting

- 7.1. 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.
- 7.2. The Authority may require a full résumé of the sub-contractor's experience and any other relevant information.

8. Tenderers to visit

- 8.1. Tenderers may be 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.
- 8.2. If a generic Risk Assessment and Method Statement is provided, the Authority may, at its option require a Site specific Risk Assessment and Method Statement.

9. 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.

10. Tender queries

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. Tenderers should seek to clarify any points of doubt or difficulty (including any apparent ambiguities, errors and omissions in the Tender Documentation) with the Authority through its Nominated Officer prior to submitting a Tender.

11. Errors in completed tenders

- 11.1. The Tenderer shall be deemed to have satisfied itself before submitting its Tender as to the correctness and sufficiency of its Price and Itemised Costs.
- 11.2. Where examination of a Tender reveals arithmetical errors these will be corrected on the basis that the rates entered into the Price and the Itemised Costs are correct and the Tenderer will be afforded the opportunity of confirming the revised totals (in writing) or withdrawing its Tender within 7 days.

12. 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 Contractor's failure to obtain or have due regard for any information necessary to prepare a fully compliant and complete tender.

13. Period of Validity

Tenderers are required to keep their tenders valid for acceptance for a period of 30 working days from the Tender Return Date.

14. Tender evaluation

- 14.1. The Authority will be conducting a full financial and technical evaluation of all tenders.
- 14.2. Evaluation of tenders may include all of any of the following:
 - 14.2.1. Price and Itemised Costs;
 - 14.2.2. Documents requested in the Tender Documentation;
 - 14.2.3. Written technical and financial references (including the Tenderer's financial accounts for such period as shall be notified) as may be requested;
 - 14.2.4. 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. The Authority may ask the Tenderer (or any sub-contractor) for evidence evidencing performance on previous

comparable contracts or consider evidence of performance on previous comparable contracts for the Authority;

14.2.5. Whether the Tenderer is subject to any enforcement or legal action or other pending investigations by either the Authority or other public agencies;

14.2.6. Whether the Tenderer is known to have contravened environment or animal welfare legislation, where concerns remain about the Tenderer's standards;

14.2.7. All other matters and information which the Authority in its absolute discretion deems applicable or relevant.

14.3. The Authority may seek clarification in various ways including but not limited to:

14.3.1. Site visits;

14.3.2. Interviews with the Contractor's key personnel who would be assigned to the Contract and appropriate senior managers.

14.4. The Authority does not undertake to accept the lowest or any tender/ rates.

15. Award of Contract

15.1. The Authority anticipates (but does not guarantee) to award a Contract within 30 working days of accepting a Tender. No reliance should be placed by a Tenderer on this timescale.

15.2. The successful Tenderer will be required to promptly execute and return to the Authority the Contract in the form attached incorporating the Conditions and Tender Documentation (and any variations as set out in the Contract) and until execution and completion of the Contract any Purchase Order (which shall incorporate the Tender Documentation) shall constitute a binding contract.

16. 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.

17. 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 sureties and quotes necessary for the preparation of the Tender.

18. 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.

19. MoorLife2015-20

This Invitation to Tender relates to a number of projects including for the purposes of the Moor LIFE project (LIFE14/NAT/UK/000070) "MoorLIFE 2020".

20. Internal Authorisation

This Invitation to Tender has been checked to confirm it meets the requirements of the partnership's future strategy and is in accordance with the Authority's internal approval procedure.



SECTION 3

DEFINITIONS AND STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

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

“**Access Tracks**” means those tracks identified by the Nominated Officer for access to and from the Works Site.

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

“**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).

“**Contamination**” means 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.

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

“**Contractor**” means the Tenderer whose Tender has been accepted by the Authority.

“**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.

“**Contract Specification**” means the specification and requirements of the Authority as set out in **Section 3** with such modifications additions and variations as may be made in accordance with this Contract.

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

“**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).

“**Detailed Conditions**” means the conditions contained at **Section 1**.

“**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.

“**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, nuclear disaster, act of terrorism or other natural physical disaster.

“**Form of Contract**” means the form of agreement annexed.

“**Framework Contractor**” means a contractor within the Framework Agreement.



“**GIS Information**” means electronic files compatible with Geographic Information System software plus a description of the projection used to create such files, as more particularly described in **Section 3**.

“**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**.

“**Material**” means the cut or flailed vegetation more particularly described in **Section 1**.

“**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.

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

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

“**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.

“**Restricted Dates**” means those dates notified to the Contractor by the Nominated Officer when the Works cannot be carried out.

“**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.

“**Tenant**” means those persons granted rights over the land on which the Works are to be performed by the Landowner.

“**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 the 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.

“**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.

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

“**Works**” means cutting and flailing 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 Plan**” means the plan for the Works for the relevant Site including information on the Works Sites and access routes and distances.

“**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.

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. The HMNSO booklet 'Waste Management – The Duty of Care – a Code of Practice with Regard to Disposal of Wastes';
 - 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.
- b. 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 1992 (COSHH);
 - ii. the Control of Pollution (Oil Storage) (England) Regulations 2001;
 - iii. Control of Pesticides Regulations 1986.
- 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 Agricultural Waste Regulations 2006. 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 Noise at Work Regulations 1989. 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.
- 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 1995 (RIDDOR).
- 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 1998.
- 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 and the requirements of the Authority;
 - 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).
 - 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

- 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.

36. 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 £5,000,000 (FIVE MILLION POUNDS) in respect of any single claim (£10,000,000 TEN MILLION POUNDS in the event that there are any Airlifting Works).

- 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. 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 shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Nominated Officer.



- 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. 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.

18. Defects Liability Provisions

- 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.

19. 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)**.

20. 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;
 - 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

**Head of Law
Peak District National Park Authority
Aldern House
Baslow Road
Bakewell
Derbyshire
DE45 1AE**

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.



26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. Warranty

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

32. 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.

33. 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.
 - i.
- e. The Parties shall comply with the provisions of the Data Protection Act 1998.

34. 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.

35. 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.

36. 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.
- c. 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.

37. 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.

38. 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 <http://www.english-heritage.org.uk/professional/protection/process/national-heritage-list-for-england/>; 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.

39. 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.