



CONTRACT

between

THE HEALTH AND SAFETY EXECUTIVE

and

ARBORETUM INTERNATIONALE

for

**EM40 – EXPERT WITNESS – TREE RELATED FATALITY AT
KIRKTON OF FETTERESSO**

This Contract is made between:

The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and

ARBORETUM INTERNATIONALE of Guildtown, Perth, PH2 6BS (hereinafter 'the Contractor' of the other part), in accordance with the details, terms and conditions stated herein.

WHEREAS

The Contractor was selected to provide services as an independent expert and agrees to adhere to the roles and responsibilities as detailed in Appendix A (where applicable).

1 STATEMENT OF SERVICES REQUIREMENT

1.1 The Services shall be carried out in accordance with the details in Schedule A.

2 MANAGEMENT OF THE CONTRACT

2.1 The Contract Managers responsible for liaison and delivery of the services are identified at Annex 1.

3 DURATION

3.1 The Work shall be deemed to have commenced on 06 April 2021 and shall be completed by 04 May 2021.

4 COSTS

4.1 The maximum amount to be paid by the HSE to the Contractor under this Contract shall not, without the prior written agreement of the HSE, exceed £3,927.00, excluding VAT.

4.2 Where appropriate, and subject to the HSE Contract Manager's approval, actual and reasonable travel and subsistence costs shall be payable in line with the rates agreed at Annex 2.

5 LIMITATION OF LIABILITY

5.1 Subject to Clause 5.2 the liability of the Contractor for any breach of this Contract, or arising in any other way out of the subject-matter of this Contract, will not extend to loss of business or profit, or to any indirect or consequential damages or losses. In any event, the maximum liability of the Contractor under or otherwise in connection with this Agreement or its subject matter shall not exceed the Contract price excluding VAT.

5.2 Nothing in this Agreement limits or excludes the liability of the Contractor:

5.2.1 for death or personal injury resulting from negligence; or

5.2.2 for any damage or liability incurred by HSE as a result of fraud or fraudulent misrepresentation by the Contractor; or

5.2.3 for any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018.

6 IR35 – INTERMEDIARIES LEGISLATION

6.1 HSE has undertaken an IR35 assessment of this engagement, and the HMRC online assessment tool determined that IR35 does not apply to this engagement.

7 TAX STATUS

7.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

7.2 Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

7.3 HSE may, at any time request that the Contractor provides information which demonstrates how it, or its staff, complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it.

7.4 A request under Clause 7.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.

7.5 HSE may terminate this contract if

a) in the case of a request mentioned in Clause 7.3 above -

(i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or

(ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it;

(b) in the case of a request mentioned in Clause 7.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or

(c) it receives information which demonstrates that, at any time when Clauses 7.1 and 7.2 apply the Contractor, or its staff, is not complying with those Clauses.

7.6 HSE may supply any information which it receives under Clause 7.3 to the Commissioners of Her Majesty's Revenue and Customs for the purposes of the collection and management of revenue for which they are responsible.

8 INVOICING AND PAYMENTS

8.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Procurement Unit. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted electronically in PDF format to APinvoices-HAS-U@gov.sscl.com

8.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.

8.3 HSE shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.

8.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

9 ACCESS TO HSE PREMISES

9.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.

9.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

10 CONFIDENTIALITY

10.1 The Contractor shall not at any time divulge any information or material acquired during the performance of this Contract to any third party without prior permission in writing of the Executive, except where required in the course of any legal proceedings.

10.2 The Contractor shall keep documents and other materials produced or acquired in the course of the contract in accordance with The Criminal Procedure and Investigations Act 1996 (CPIA).

10.3 HSE may disclose the Confidential Information of the Contractor:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 10.3(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

11 PUBLICATION

- 11.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 11.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- 11.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

12 GDPR DATA PROTECTION

- 12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the

Processor. The only processing that the Contractor is authorised to do is listed in Schedule B (where applicable) by the Customer and may not be determined by the Contractor.

- 12.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 12.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- a) process that Personal Data only in accordance with Schedule B (where applicable), unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule B);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 12.5 Subject to clause 12.6, the Contractor shall notify the Customer immediately if it:
- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- 12.6 The Contractor's obligation to notify under clause 12.5 shall include the provision of further information to the Customer in phases, as details become available.
- 12.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- a) the Customer with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c) the Customer, at its request with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Customer following any Data Loss Event;
 - e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 12.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- a) the Customer determines that the processing is not occasional;
 - b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 12.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 12.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- a) notify the Customer in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Customer;
 - c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 12.11 such that they apply to the Sub-processor; and
 - d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonable require.
- 12.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 12.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

13 VARIATION TO CONTRACT

- 13.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.
- 13.2 Any agreed changes to the Contract or Schedule A (Programme of Work) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Procurement Unit.

14 GOVERNING LAW

- 14.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

15 TERMINATION

- 15.1 This contract may be terminated by either party by giving one weeks notice. In the event of termination by HSE, the contractor shall provided with any reimbursement of costs, actually and reasonably incurred, up to the date of termination, subject to the limit specified in Clause 4 above.

As Witnessed at the Hands of the Parties

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN AGREED :

Signature _____

Name in Capitals _____

Position _____

Date _____

Duly authorised to sign on behalf of

ARBORETUM INTERNATIONALE

Guildtown, Perth PH2 6BS

Signature _____

Name in Capitals _____

Position Procurement Manager

Date _____

Duly authorised to sign on behalf of the

HEALTH AND SAFETY EXECUTIVE

Procurement Unit, Building 2.3, Redgrave Court, Merton Road, Bootle, Merseyside
L20 7HS

Schedule A

STATEMENT OF SERVICES REQUIREMENT

As an independent expert to contribute in the investigation of the death of Andrew Pirie on the 25th June 2020 at Kirkton of Fetteresso, Aberdeenshire, Scotland.

Paul Hanson of Arboretum Internationale is required to review all of the evidence obtained by HSE to date and produce the following:

Part 1 – General witness statement detailing:

- a. Your professional qualifications.
- b. Your professional experience, including your knowledge and experience of tree felling activities, and particularly 'sectional felling'.
- c. A list of the evidence (statements and productions) that has been provided to you by HSE. You should also include any published guidance, research, or journals that you have considered in relation to the case.
- d. A declaration that you understand your duties as an expert witness under criminal law.

Part 2 – Case specific report detailing:

a. *Setting the scene*

- Following your review of the evidence gathered by HSE, provide your opinion as to how this work activity would be classified, such as 'sectional felling' or other, and explain what this type of work activity is, what it involves, etc.
- Please outline the hazards and level of risk associated with this kind of work generally and relevant injury/death statistics.
- Please outline the hazards and level of risk posed to a tree surgeon/arborist with this kind of work.
- Please outline the hazards and level of risk posed to persons working at ground level during this kind of work work.

b. *Control Measures*

- Please outline reasonably practicable control measures that can be provided to reduce the risk to tree surgeons/arborists during sectional felling.
- Please outline reasonably practicable control measures that can be provided to reduce the risk to ground workers during sectional felling including the risk of them being struck by falling sections of timber.

c. *Training*

- Review Scott Menhinick's (Tree Surgeon/Arborist) training record and provide opinion as to whether or not he had the correct training for this type of work.
- From the evidence obtained by HSE (statements/photographs/etc) can you state whether or not Scott Menhinick was competent for this type of work? Has he carried out the work in a competent manner in line with industry

standards? Do any of the photographs taken by HSE/Witnesses/or the Police show poor practice?

d. Responsibilities

- With regards to the incident under investigation, in your opinion, would it have been reasonable to expect Scott Menhinick (as the trained/competent Tree Surgeon/Arborist) to ensure that reasonably practicable control measures were in place to prevent ground workers entering the danger zone? (area where felled timber is liable to fall). If yes, please explain in detail.
- If it is not your opinion that this was Scott Menhinicks responsibility, who should have managed this and why?

e. The incident

- Highlight any factors/failures/issues you have identified following your review of the evidence and how these may have contributed to the incident.
- What reasonably practicable control measures could and should have been provided during this work activity to prevent the incident from occurring?
- Who should have directed that these control measures were in place before work commenced?
- Why this person, and not someone else?
- Provide opinion on any other factors/issues/failures that you have identified during your review of the evidence gathered to date, which may have contributed to the incident.
- Was this work activity carried out in a safe manner?
- Is it your opinion that Scott Menhenick failed to ensure the health and safety of others who could be affected by his work activities so far as is reasonably practicable? Whatever your opinion, please explain it in detail.
- What could and should he have done?

f. Misc

- Provide any other opinion that you feel is relevant to the incident and circumstances under investigation.

Monitoring and communication requirements between HSE and External Specialist

- Weekly update on progress to be provided to HSE (Connor Gibson) by email.
- Any issues or requests for further information to be directed to investigating inspector (Connor Gibson)

If applicable, attendance at court/inquest to provide evidence.

Schedule B

SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are : Sean Egan, 0203 028 3547, sean.egan@hse.gov.uk
2. The contact details of the Processor's Data Protection Officer are : **insert contact details**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1</i>
Subject matter of the processing	Processing of investigation case materials to enable Processor to effectively deliver contract to provide expert witness services in relation to potential criminal court proceedings initiated by a statutory body, namely HSE.
Duration of the processing	Processing start date: 07.04.2021 (date materials to be provided). Processing end date: 04.05.2021(subject to any court proceedings for which the Expert witness report has been produced and, if appropriate, any proscribed period for appeal proceedings).
Nature and purposes of the processing	The data was provided to the Processor electronically. The nature of the processing will therefore include storing the data electronically, retrieving these materials and printing off hard copies for consideration and potential inclusion in an Expert witness report and statement produced for the purposes of potential criminal proceedings.
Type of Personal Data	The materials provided include names, addresses, telephone numbers, email addresses, dates of birth, HSE witness statements, police witness statements, training records, HSE and Police site photographs (including images of a deceased person)
Categories of Data Subject	The categories of Data subject provided include: HSE staff, Police staff, employees of Aberdeen City Council, deceased next of kin and members of the public.

Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Processor to irretrievably and securely destroy all information HSE has shared with them upon completion of contract, with any printed materials shredded to an appropriate standard and provide written confirmation that this has been done.
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CONTACT LIST

HSE Contacts	Contractor Contacts
Contractual Queries	
Contract Managers / Technical Queries	

Annex 2

HSE UK TRAVEL AND SUBSISTENCE RATES

Car Mileage Rates (for using your own vehicle) – All engine types and sizes

Up to 10,000 mile per financial year	45p per mile
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Over 10,000 miles per financial year	25p per mile
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NB: Your vehicle must be insured for Business Use

Public Transport Fares

Second Class Rail travel, Air fares (within UK only), Bus fares etc will be payable at cost on production of receipts, provided that the most economical means of transport has been used.

SUBSISTENCE RATES

All receipts **must** be retained to support your claim.

Day Subsistence

More than 5 hours and up to 10 hours	Actual costs up to £6.00
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More than 10 hours and up to 12 hours	Actual costs up to £10.00
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More than 12 hours	Actual costs up to £16.00
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Night Subsistence

Booked via HSE Accommodation Booking Agency :

The 24 hour overnight subsistence allowance consists of 2 components :

Meal One	Actual costs up to £6.00
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Meal Two	Actual costs up to £15.00
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This is payable as a “24 hour” rate and amounts incurred over any individual component will not be reimbursed by HSE. The rates are agreed with HMRC to obtain dispensation from tax liability.

Booked making your own Commercial Arrangements

Actual cost of bed and breakfast up to a maximum of:	£93.00 per night in London or £70.00 per night elsewhere
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Appendix A



Appendix A -
Scotland.pdf