

## **SPECIAL TERMS FOR MINOR WORKS**

These Special Terms are to be read in conjunction with the General Terms and the Service Order and govern the provision of minor construction works by the Contractor for Natural England.

### **1. Performance**

- 1.1 The Contractor shall carry out and complete the Services in a proper and workmanlike manner and where any design is carried out shall use reasonable skill, care and diligence, including in the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used.
- 1.2 The Contractor shall comply with the CDM Regulations in so far as they apply to the Services.
- 1.3 The Contractor shall provide the labour and plant and machinery necessary to carry out the Services.
- 1.4 The Contractor shall maintain and keep daily records of labour, plant and materials deployed for the provision of the Services and shall on request promptly provide copies of such records to Natural England.
- 1.5 Natural England grants the Contractor a licence to occupy the Premises for the sole purpose of undertaking the Services. The Contractor may not sub-contract any part of the Services without the prior written consent of Natural England. The Contractor shall remain wholly responsible for carrying out and completing the Services in all respects, notwithstanding any sub-contracting.
- 1.6 If it becomes apparent that the Services will not be completed by the end of the Contract Period (or any later date fixed in accordance with the provisions of this clause and "Contract Period" shall be construed accordingly throughout these Special Terms) for reasons beyond the control of the Contractor then the Contractor shall, in writing, notify Natural England who shall endeavour to make, in writing, such extension of time for completion as Natural England feels, at its absolute discretion, may be fair and reasonable in the circumstances. For the avoidance of doubt, any default of the Contractor, or of others employed or engaged by or under him, for or in connection with the Services or of any supplier of goods or materials for the Services, shall be deemed to be a reason within the control of the Contractor.
- 1.7 Without prejudice to any other deductions which are permitted to be made by Natural England under the Agreement, the Contractor shall be liable to pay to Natural England delay damages at the rate identified in the Service Order for any delay in completing the Services beyond the end of the Contract Period. For the avoidance of doubt, if no such rate is stated, Natural England shall be entitled to claim its actual losses arising out of any delay.
- 1.8 The Contractor shall notify Natural England in writing when he believes the Services are likely to be completed within the next seven days. Natural England shall certify the date when, in its opinion, it is satisfied the Services have reached completion.

### **2. Payment**

- 2.1 If Natural England is or becomes a 'contractor' for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, its obligation to

- make any payments under the Agreement is subject to the provisions of the CIS.
- 2.2 The Contractor shall be entitled to apply for interim monthly payments.
- 2.3 The Contractor shall provide Natural England with its applications for payment on the last business day of each month stating the sum that the Contractor considers to be due to it and the basis on which that sum has been calculated. Each application shall include all the information and documents necessary and required by Natural England to enable it to give the Contractor the payment notice referred to under clause 2.5 below.
- 2.4 The due date<sup>1</sup> for each payment shall be 10 days after the last business day of each month or the date of receipt by Natural England of the application under clause 2.3, whichever is later.
- 2.5 Not later than 5 days after the due date Natural England shall give a written notice to the Contractor (a Payment Notice) specifying the sum that Natural England considers to be due to the Contractor and the basis on which that sum has been calculated.
- 2.6 The final date for payment of the application shall be 28 days after the last business day of each month or the date of receipt by Natural England of the application under clause 2.3, whichever is later.
- 2.7 If Natural England intends to pay less than the sum stated as due from it in its Payment Notice or the Contractor's application, as the case may be, it shall, not later than 1 day before the final date for payment, give a written notice to the Contractor (a Pay Less Notice) specifying the sum that Natural England considers to be due to the Contractor and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

*Final Payment*

- 2.8 Within 28 days following satisfactory completion of the Services, the Contractor shall provide Natural England with its final application for payment stating the final sum that the Contractor considers to be due to it and the basis on which that sum has been calculated. The final application shall include all the information and documents necessary and required by Natural England to enable it to give the Contractor the payment notice referred to under clause 2.10 below.
- 2.9 The due date for the final payment shall be 10 days after the date of receipt of the final application by Natural England.
- 2.10 Not later than 5 days after the due date for the final application, Natural England shall give a written notice to the Contractor (the Final Payment Notice) specifying the sum that Natural England considers to be due to the Contractor and the basis on which that sum has been calculated.
- 2.11 The final date for payment of the final application shall be 28 days after its receipt by Natural England.
- 2.12 If Natural England intends to pay less than the sum stated as due from it in its Final Payment Notice or the Contractor's final application, as the case may be, it shall, not later than 1 day before the final date for payment, give a written notice to the Contractor (a Pay Less Notice) specifying the sum that Natural England considers to be due to the Contractor and the basis on which that sum has been

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<sup>1</sup> Please note that the due date is not the date on which actual payment has to be made.

calculated. Where a Pay Less Notice is given, the final payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

### **3. Natural England Instructions**

- 3.1 Natural England may issue instructions which may require an addition to, omission from or other change in the Services or the order or period in which they are to be carried out. Natural England will confirm such instructions to the Contractor in writing.
- 3.2 Within 7 days of receipt of such an instruction, the Contractor shall provide Natural England with a quotation for carrying out such instruction. The Contractor shall only proceed with such an instruction where Natural England has provided written approval of the Contractor's quotation.

### **4. Quality and Defects**

- 4.1 If the Contractor is in Default of its obligations to provide the Services (or any part of them) in accordance with the Agreement then, without prejudice to any other right or remedy available to Natural England under the Agreement or otherwise, Natural England may elect one or more of the following remedies:
  - 4.1.1 require the Contractor, at the Contractor's own expense, to promptly make good any defect or re-perform any non-conforming Services;
  - 4.1.2 without determining the Agreement in whole or in part, itself provide or hire another person or persons to provide all or any part of the Services until the Contractor has proved to the reasonable satisfaction of Natural England that the Services will be provided in accordance with the terms of the Agreement, and in either case the Contractor shall pay the reasonable costs so incurred by Natural England; or
  - 4.1.3 without determining the Agreement in whole or in part, withhold from payment to the Contractor or recover as a sum of money due from the Contractor the Contract Price or any portion thereof that are allocated to the Default or non-conforming Services.
- 4.2 Without prejudice to clause 4.1, the Contractor shall (subject to Natural England providing necessary access) make good any defects directly attributable to workmanship or materials not in accordance with the Agreement (but excluding normal wear and tear arising through normal usage) which may appear within 6 (six) months from the date of completion of the Services. Such Services shall be at the Contractor's own cost and subject to Natural England's reasonable satisfaction.
- 4.3 All materials and goods used in relation to the Services shall be of the kinds and standards specified in the Service Order or as agreed in writing with Natural England. If no specification is provided then the Contractor shall ensure that any goods or materials provided or used for the purposes of the Services shall be of good quality and shall meet the relevant British Standards.
- 4.4 The Contractor shall at his own cost take all necessary measures to prevent injury loss or damage to the Services or any adjacent properties or areas.
- 4.5 During the Contract Period (including any extension of the same as agreed between the Parties) the Contractor shall keep the Premises clear of any rubbish,

debris and surplus materials produced in connection with the Services and shall keep access at and to the Premises clear at all times.

- 4.6 On completion of the Services the Contractor shall immediately clear the Premises of any rubbish, debris, surplus materials produced in connection with the Services so as to leave the Premises in a clean and tidy condition to the satisfaction of Natural England.

## **5. Risk / Property**

- 5.1 The materials and equipment for the Services shall be delivered to the Contractor or his representatives on the Premises who shall be responsible for the receiving, unloading and clearing of the same. If the Contractor does not take delivery of the materials or equipment, Natural England delivery and in not doing so will incur no liability whatsoever in respect of the same including in relation to any defects or shortages.
- 5.2 Unfixed goods or materials delivered to, placed on or adjacent to the Premises shall remain the property of the Contractor until paid for by Natural England and shall be at the Contractor's risk for the Contract Price.
- 5.3 Where the value of any materials or goods has been included in any invoice from the Contractor to Natural England, subject to payment of that invoice, such materials and goods shall become the property of Natural England but shall remain at the risk of the Contractor.

## **6. Consequences of Termination**

- 6.1 Following termination of this Agreement Natural England may employ another contractor to complete the Services and or to remedy any defects in the Services. Natural England shall be entitled to recover all costs incurred in connection with the completion and any remedial works associated with the Services and the Contractor shall indemnify Natural England in respect of the same.
- 6.2 Clause 20.1.2 and 20.2 of the General Terms shall not apply.

## **7. Dispute Resolution**

- 7.1 Notwithstanding Clause 35 of the General Terms, if any dispute or difference arises under the Agreement which either Party wishes to refer to adjudication, The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply and the adjudicator shall be nominated by the President or Vice President of the Royal Institution of Chartered Surveyors (RICS).

## **8. Exclusion from the Works**

- 8.1 Natural England may (but shall not unreasonably) issue instructions requiring the exclusion from the Premises of any employee, subcontractor or agent of the Contractor.

## **9. Insurance**

- 9.1 Where the Services include design the Contractor shall maintain appropriate professional indemnity insurance in the sum stated in the Service Order (or if no sum is stated for no less than £1million (one million pounds)) for each and every claim for a period of six years from completion of the Services, provided such insurance is available in the UK market at commercially reasonable rates. The Contractor shall immediately inform Natural England if such insurance is not or ceases to be available in the UK market at commercially reasonable rates in order that the Contractor and Natural England can discuss the means of best protecting Natural England and the Contractor in the absence of such insurance. For the avoidance of doubt payment of any increased or additional premiums required by insurers by reason of the Contractor's own claims record or other acts omissions matters or things peculiar to it will be deemed to be within the Contractor's obligations.