

Contract No. 1.11.4.3945.

To Be Quoted On All Correspondence



CONTRACT

between

THE HEALTH AND SAFETY EXECUTIVE

and

INDEPENDENT ARBORICULTURE & URBAN FORESTRY LIMITED

for

**EM42 – Expert Witness Contributing to the Investigation into
a Fatal Tree Collapse at Rous Lench Court on 17th March 2021**

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

INDEPENDENT ARBORICULTURE & URBAN FORESTRY LIMITED of Robinia House, Butterrow Hill, Butterrow, Stroud, GL5 2LG (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 25 March 2021 and shall be completed by 30 July 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 £6,000.00, 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 or 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 reasonably 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.

Contract No. 1.11.4.3945.

As Witnessed at the Hands of the Parties

Contract No. 1.11.4.3945.

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN AGREED :

Signature

Name in Capitals

Position

Date

Duly authorised to sign on behalf of

INDEPENDENT ARBORICULTURE & URBAN FORESTRY LIMITED

Robinia House, Butterrow Hill, Butterrow, Stroud, GL5 2LG

Signature

Name in Capitals

Position

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 Expert witness a fatal tree collapse at Rous Lench Court on 17th March 2021.

Independent Arboriculture & Urban Forestry Limited are requested to provide the following:-

Site visit to take place 26/03/2021:

1. Jointly with the inspector to carry out an inspection and collect evidence to inform an opinion of the circumstances of the incident.
2. Provide advice on any remedial actions required to ensure safety of the work going forward.

Meeting Attendance (only if deemed necessary following site visit)

3. Meeting via Skype to discuss the initial findings and ensure all documentation has been provided. Any further documentation could be requested.

Expert report to be provided in two parts. A preliminary report to be provided at the earliest opportunity outlining information obtained during initial visit and a full report once documentation and PACE interviews have been completed:

4. Review the material provided by the Investigating Inspector (record of material supplied will be kept by the investigation team and should be referred to in your report) and produce an expert report based on the above and your findings from the site visit and your expert opinion on the following:
 - a. Assess the fallen tree. Why did the tree fail? Consideration of any contributory tree disease or damage that may have contributed to the tree falling.
 - b. An approximate timeline of the 'tree failure' and any subsequent movement.
 - c. Assess the work carried out on and around the tree and the way it was done. Was this the correct method? Did this contribute to movement of the tree?
 - d. Assessment of the way the work was planned (including risk assessed) and monitored.
 - e. Assessment of whether the chainsaw operative who worked on the tree had the appropriate training/competence to cut a tree of this complexity.
 - f. An assessment of the tools/equipment used when working on the tree including a reference to the type of equipment you would expect to be used when conducting an activity such as this.
 - g. What would be considered to be a dangerous and/or high-risk tree and why?
 - h. Were there any dangerous trees present in the vicinity of the fallen tree in the gardens at Rous Lench Court at the time of your visit (both the remnants of the incident tree and/or other trees) - and if so what risks, dangers and hazards did they pose and why?

- i. How would you expect the trees to be suitably managed/worked on at this site? – comment on attention to suitable planning arrangements and risk assessments, safe system of work; inspections and frequency of such, working practices, competency of staff carrying out work, relate to industry and other guidance where necessary etc.
- j. What training would be required to do tree management/assessment?
- k. Please add any other relevant comments as necessary.
- l. Consider any relevant health and safety guidance and industry standards when providing your opinion and whether the standards in place are below what is expected.

Preliminary Report – To be used to assist PACE interviews – 30th April 2021

- a. Why did the tree fail? Consideration of any contributory tree disease or damage that may have contributed to the tree falling.
 - b. An approximate timeline of the 'tree failure' and any subsequent movement.
 - c. The foreseeability of harm from the fallen tree at Rous Lench Court?
 - d. What should tree work of this nature look like? (including example control measures and any equipment to be used).
 - e. Reference to the relevant standards and guidance.
5. To produce a statement exhibiting a report that comments on the matters set out in the specification above and other matters should they arise
6. 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 : simon@iauf.co.uk
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	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
Subject matter of the processing	Processing of prosecution case materials to enable Processor to effectively deliver contract to provide expert witness services in relation to court proceeding initiated by a statutory body, namely HSE
Duration of the processing	Processing start date: 26.03.2021 (date materials provided). Processing end date: 10 working days from the conclusion of the Processor's involvement in the matter (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 (via email). 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 produced for the purposes of criminal proceedings
Type of Personal Data	The materials provided include: names, addresses, telephone numbers, email addresses, dates of birth and photos of people, police interview recordings.
Categories of Data Subject	The categories of Data subject provided include: HSE & HSL staff, West Mercia Police employees, employees of defendant companies and details of the deceased person.
Plan for return and destruction of the data once the processing is complete UNLESS	Processor to irretrievably and securely destroy all information HSE has shared with them, with any printed materials shredded to an appropriate standard and provide written confirmation that this has been done.

Contract No. 1.11.4.3945.

requirement under union or member state law to preserve that type of data	
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Annex 1

CONTACT LIST

HSE Contacts	Contractor Contacts
Contractual Queries	
Contract Managers / Technical Queries	
Health & Safety Executive Field Operations Division 19 Ridgeway Quinton Business Park Birmingham B32 1AL	

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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Contract No. 1.11.4.3945.

Appendix A



Appendix A -
Scotland.pdf