



# **Moors for the Future Partnership**

## **MFF 15a 2016-2018 Invitation to Tender for Supply & Delivery of Plastic Piling**

**Return Date: 5pm Thursday 16<sup>th</sup> December 2016**



## **PROJECT OBJECTIVES, DETAILED SPECIFICATION AND CONDITIONS**

### **PART A**

#### **Contract Objectives**

1. This Invitation for Tender is to establish a supply contract, the objective of which is the supply & delivery of Plastic Piling for the purpose of creating dams in peat moorlands to create habitat pools and assist in the rewetting of the moors.
2. The supply contract is for the period **1 January 2017 to 31 March 2018**.
3. The Plastic Piling as specified below has previously been used to create the dams required. However, Contractors are invited to suggest any other products that would be fit for purpose and appropriate to create dams. We have therefore included an Itemised Costs section for alternative products and request that specification sheets are supplied with the Invitation to Tender for all alternative products.
4. The supply of Plastic Piling includes the following sub objectives:
  - a. Production of and adherence to all health and safety material for the supply of the Plastic Piling including the provision and maintenance of insurance in accordance with the Standard Conditions to the sum of £5,000,000 (five million pounds).
  - b. Collection of details about journeys made by all Contractor vehicles (staff travel, deliveries vehicles etc.) in connection with any Contract will need to be recorded by the Contractor and provided to the Authority for the carbon audit of the overall project.
  - c. Clear communication with the Authority prior to and during the course of the Works, including but not limited to; Material deliveries and Site access.
5. Tenderers should supply specification sheets for all quoted products.
6. Tenderers should supply samples of their quoted products with their tender.
7. Tenderers may provide a price for all or any of the products specified below.
8. The quantity of Plastic Piling shall consist of not less than 2000 metres of Plastic Piling of various lengths and specification, for delivery on a Call off Basis to Delivery Sites to be confirmed during the Contract Period.
9. Tenderers are requested to provide a Price for supply and delivery of Material during the contract Period. The Price stated in the Form of Tender shall apply for the whole of the Contract Period.
10. The Authority is unable to confirm exact figures for its requirements. Tenderers are therefore requested to provide rates in the Itemised Costs for the Contract Period.



## **PART B**

### **Plastic Piling Specification**

1. The Plastic Piling shall conform to one of the following requirements:
  - a. Standard "Z" Rib Form with tie back lugs
    - i. This is a bespoke form, details are available on request
    - ii. Colour: Non-skinned coloured brown;
    - iii. In 0.75m, 1.0m and 1.25m lengths; and
    - iv. Please specify the width of the product in the Itemised Costs.
  - OR
  - b. Standard "Z" Rib Form;
    - i. Colour: Non-skinned coloured brown;
    - ii. In 0.75m, 1.0m and 1.25m lengths; and
    - iii. Please specify the width of the product in the Itemised Cost.
  - OR
  - c. Standard "Z" Rib Form with tie back lugs
    - i. This is a bespoke form, details are available on request
    - ii. Colour: Standard Grey
    - iii. In 0.75m, 1.0m and 1.25m lengths; and
    - iv. Please specify the width of the product in the Itemised Costs.
  - OR
  - d. Standard "Z" Rib Form;
    - i. Colour: Standard Grey
    - ii. In 0.75m, 1.0m and 1.25m lengths; and
    - iii. Please specify the width of the product in the Itemised Costs.
  - Or
  - e. Other specified product
    - i. Please supply specification sheets.

### **Supply and Delivery of Plastic Piling:**

1. Tenderers are requested to provide details of:
  - a. Lead times required between order and delivery of the Plastic Piling for the Contract Period.
  - b. Specifications of all quoted products.
2. During any Contract Period the Authority, or Nominated Third Party, shall by Purchase Order notify the Contractor of the number of metres of Plastic Piling required.
3. The Contractor must be able supply the quantity of Plastic Piling referred to in such Purchase Order and deliver it to such Delivery Site shown on the Location Maps or such alternative Delivery Sites as shall be notified in writing to the Contractor by the Authority or Nominated Third Party.



## **PART C**

### **DETAILED CONDITIONS**

#### **1. Price**

1.1. The rates set out in the Form of Tender and Itemised Costs (“the Price”) shall be fixed for the Contract Period. Save for agreed Contract Variations, the Price shall not be increased.

#### **2. Timing of Delivery**

2.1. Proposed Contract Period: 1<sup>st</sup> January 2017 until 31<sup>st</sup> March 2018

2.2. The supply and delivery of Plastic Piling shall be on the dates set out in each Purchase Order.

#### **3. Delivery of Materials**

3.1. Deliveries may be made to anywhere in the Peak District & South Pennines Special Area of Conservation.

3.1.1. See Annexure 1 for Location Map.

3.2. The Contractor must satisfy themselves that any vehicle that they have chosen for deliveries can safely and properly access the Delivery Sites.

3.3. The Authority will reject any Plastic Piling delivered by the Contractor unless the Contractor has been issued with a relevant Purchase Order.

#### **4. Health and safety**

4.1. The Contractor is responsible for health and safety during the course of the Contract. Method Statements will need to be approved by the Nominated Officer. Method statements should include operational risks assessments, copies of which are to be submitted with the Tender Return. Failure to submit Method Statements and Risk Assessments may result in the disqualification of the Tender.

4.2. Copies of Risk Assessments for all deliveries will be required prior to the Supply Commencement Date.

#### **5. Liquidated Damages**

5.1. This Contract consists of one element of a much larger project involving a number of contracts for the delivery of goods and the provision of services. If the Contractor fails to supply and deliver the Material 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.

5.2. In the event that the Plastic Piling requested in a Purchase Order form has not been supplied and/or delivered in whole or in part on the date stated in the Purchase Order form, the Contractor shall be liable to pay on demand to the Authority in liquidated damages such costs as the Authority may reasonably incur as a result of such delay (including but not limited to the Authority suspending this Contract and obtaining the services of another contractor to Supply the Plastic Piling). Such damages shall not be due where the delay is caused by a Force Majeure Event or the negligence or omission of the Authority.



## **6. Defects Liability**

- 6.1. The Defects Liability Period in respect of the Plastic Piling shall be 12 months from the date of delivery.
- 6.2. The Authority has the right at any time during the Defects Liability Period, to inspect the Plastic Piling, make representations and require remediation in accordance with the Standard Conditions.

## **7. Insurance**

- 7.1. The Contractor (and any sub-contractors) is required to maintain insurance in accordance with the Standard Conditions in the sum of £5,000,000 (five million pounds). Copies must be included with the Tender.

## **8. Carbon Audit**

- 8.1. As part of the Moor Life 2020 project, Moors for the Future Partnership are required to collect information to calculate the carbon footprint of the project.
- 8.2. Details about journeys made by all Contractor vehicles (staff travel, tractors, helicopters, deliveries etc.) will need to be recorded by the Contractor and provided to the Authority.
- 8.3. Details of this data collection and forms to fill in will be issued to the Contractor upon award of Contract.

## **9. Socio Economic Impact**

- 9.1. 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.
- 9.2. **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.
- 9.3. The following information may be requested from the Contractor:
  - 9.3.1. Type/status of business (e.g. sole trader, partnership, limited company, social enterprise, cooperative, charity)
  - 9.3.2. Business size (number of employees and types of contracts)
  - 9.3.3. Number of years trading
  - 9.3.4. Registered address.
  - 9.3.5. Number of people employed by contractors and partners in the delivery of the project actions
  - 9.3.6. Number of years employed by the enterprise at start of contract
  - 9.3.7. The length and type of employment contracts of people working on the contract
  - 9.3.8. De-personalised information on their home addresses (first three digits of postcode).

## **10. Invoices**

- 10.1. 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.

- 10.2. 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.
- 10.3. 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

## **11. Communications and marketing**

- 11.1. Any works for the Authority may be included in promotional material released by the Authority.
- 11.2. By accepting an Authority Purchase Order the Contractor is consenting to use their company image, branding and equipment for the use of publicity and marketing by the Authority.
- 11.3. The Authority may include, but reserves the right not to, credit the Contractor in any publicity they release.
- 11.4. The use of Contractor images does not include images of the faces of individual workers. Should any pictures of faces, or recognisable features of an individual, be included in an image which the Authority wishes to use then consent will be requested of the individual through the Contractor. If they refuse permission then these pictures will not be used.
- 11.5. The consent given by this Clause refers to all forms of media including social media.
- 11.6. The Contractor shall only be permitted to use images taken during the Works if they adhere to the Moors for the Future Communications protocol. A copy of this protocol will be freely available on request from the Authority via the Nominated Officer. This is applicable for all forms of media, including social media. The protocol has different sections relating to the different types of publicity and media and for the avoidance of doubt referrals can be made to the MFFP communications manager.
- 11.7. Any unauthorised use of Authority works for the Contractors own publicity will assessed for suitability shall be removed on request.

## **12. Moor Life 2020**

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



**PART D**

**ITEMISED COSTS:**

<b>General Items and Preliminaries:-</b>					
<b>1</b>	<b>Work Required</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rates (£'s)</b>	<b>Total Cost (£'s) (Exc. VAT)</b>
a	<b><u>Contractual Requirements</u></b>				
b	Insurance against damage to persons or property (£5,000,000)	Item			
c	Provision of Carbon Audit data	Item			
d	Additional Items required to meet contractual requirements				
		Item			
	Total carried forward to collection			<b>Total</b>	



For the purposes of the requested costs it should be assumed that orders will be placed in quantities such that not less than 1000meters total length (cumulative across all three lengths requested) of Plastic Piling will be ordered together.

Please indicate if a minimum order quantity and / or value is required in the appropriate table below.

<b>2a</b>	<b>Supply of A (Tie Back Lug Z Rib Plastic Piling: Non-Skinned Brown)</b>	<b>Width of product (mm)</b>	<b>Unit</b>	<b>Rate per Unit (£'s) Exc. VAT</b>
	0.75m Length		Item	
	1.0m Length		Item	
	1.25m Length		Item	

<b>2b</b>	<b>Supply of B (Z Rib Plastic Piling: Non-Skinned Brown)</b>	<b>Width of product (mm)</b>	<b>Unit</b>	<b>Rate per Unit (£'s) Exc. VAT</b>
	0.75m Length		Item	
	1.0m Length		Item	
	1.25m Length		Item	

<b>2c</b>	<b>Supply of C (Tie Back Lug Z Rib Plastic Piling: Standard Grey)</b>	<b>Width of product (mm)</b>	<b>Unit</b>	<b>Rate per Unit (£'s) Exc. VAT</b>
	0.75m Length		Item	
	1.0m Length		Item	
	1.25m Length		Item	



<b>2d</b>	<b>Supply of D (Z Rib Plastic Piling: Standard Grey)</b>	<b>Width of product (mm)</b>	<b>Unit</b>	<b>Rate per Unit (£'s) Exc. VAT</b>
	0.75m Length		Item	
	1.0m Length		Item	
	1.25m Length		Item	

<b>2e</b>	<b>Supply of E (Alternative Piling Product)</b>	<b>Width of product (mm)</b>	<b>Unit</b>	<b>Rate per Unit (£'s) Exc. VAT</b>
	0.75m Length		Item	
	1.0m Length		Item	
	1.25m Length		Item	

<b>3</b>	<b>Delivery of Plastic Piling</b>	<b>Delivery Quantity (please specify maximum number of meters per delivery)</b>	<b>Delivery Area (please see Map)</b>	<b>Rate per Delivery (£'s) (Exc. VAT)</b>
	Cost of Delivery		Kinder	
	Cost of Delivery		Bleaklow	
	Cost of Delivery		Holme Moss	
	Cost of Delivery		Stalybridge	
	Cost of Delivery		Marsden	
	Cost of Delivery		South Pennies Commons	
	Cost of Delivery		Oxenhope/ Heptonstall	

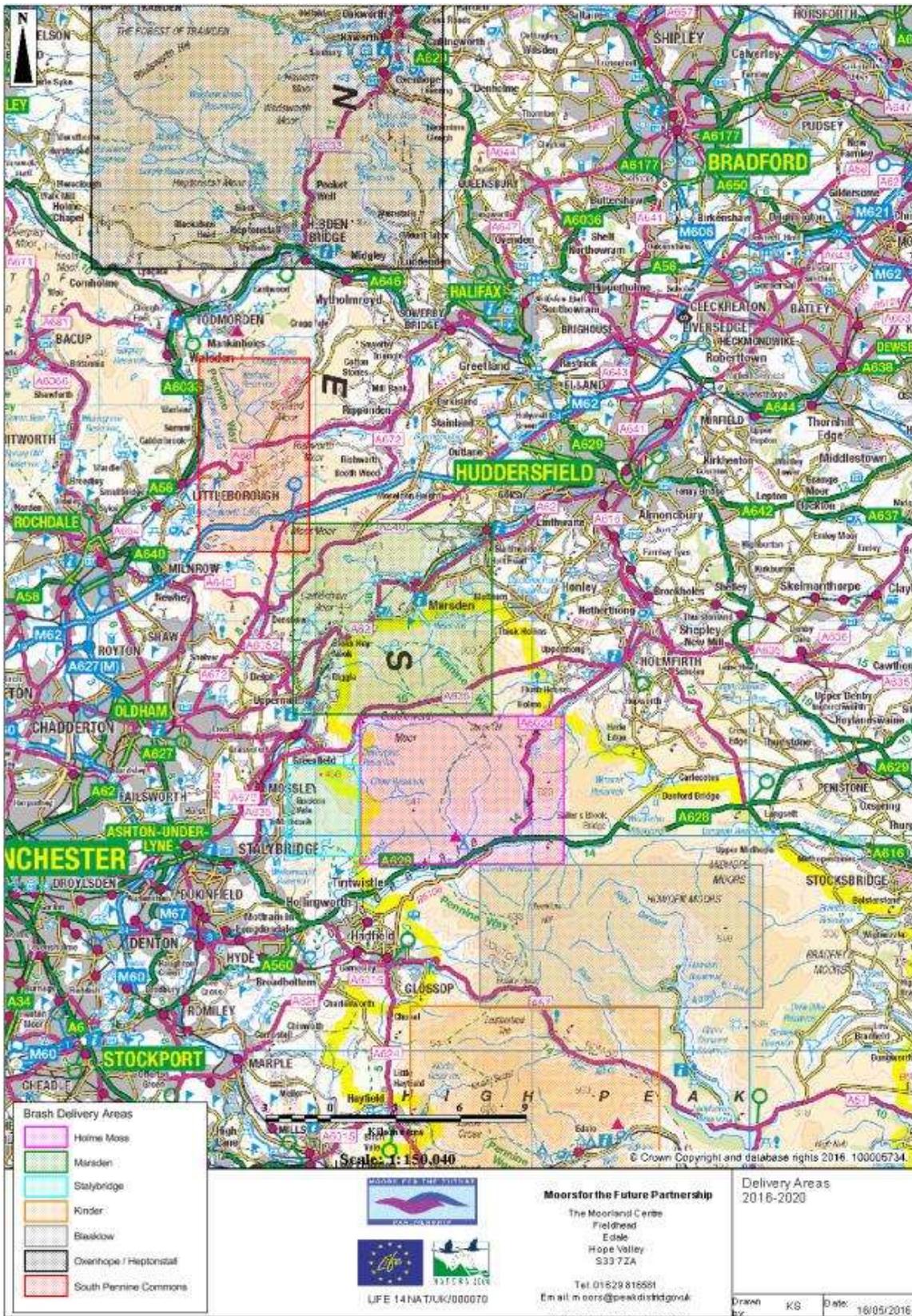


<b>4</b>	Additional Information	
<b>a</b>	Lead Time for delivery of Plastic piling	Working Days
<b>b</b>	EITHER - Minimum Order Quantity	Meters
<b>c</b>	OR - Minimum Order Value	£
<b>d</b>	Please supply specification sheets for all quoted products	
<b>e</b>	Any other information deemed relevant to this contract	





## Annexure 1 - Delivery Areas Map





## **SECTION 2: INSTRUCTIONS ON SUBMITTING A TENDER (SUPPLY OF MATERIALS)**

### **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 supply (and delivery if applicable) of the Materials.

#### **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 Supply of the Materials. However, the Authority reserves the right to split the award of the supply into packages.

#### **4. Contract Period**

Tenders are invited for period of a single task.

#### **5. Tendering Procedure**

- a. **THE DEADLINE FOR RECEIPT OF TENDERS IS 5PM ON THE TENDER RETURN DATE.**
- b. 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.
- c. The Tender shall be made on the Form of Tender. It must be accompanied by the following information:
  - i. Organisation (including Risks Assessments and Method Statements);
  - ii. Analysis of resources;
  - iii. Itemised Costs;
  - iv. Details of any part of the Supply to be sub-contracted;
  - v. Copies of all Insurance Certificates, for the Tenderer and any sub-contractors;
  - vi. Any other information requested in the Section 1 (Specification and Detailed Conditions).
- d. 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.
- e. 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.
- f. 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:

MFF15a 2016-2018 supply and delivery of Plastic Piling  
F.A.O The Chief Financial Officer  
Peak District National Park Authority  
Aldern House  
Baslow Road  
Bakewell  
Derbyshire  
DE45 1AE.

#### **6. Basis of Tender**



- a. The Tender shall show the Price for the supply (and delivery if applicable) and the VAT separately.
- b. The Price must include value of all of the Material supplied and must cover all costs and expenses which may be incurred in order to complete the supply of Materials in accordance with the Tender Documentation and to assume all express and implied risks, liabilities and obligations imposed by Tender Documentation.
- c. The value of the Contract, based on the Price will be agreed in writing prior to the Supply Commencement Date.

## **7. Sub-contracting**

- 7.1. When submitting its Tender, the Tenderer must notify the Authority of any parts of the Supply 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**

N/A.

## **9. Presentation to the Authority**

N/A.

## **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. Tenderer's queries must be raised within a reasonable period of the date of the Invitation to Tender or within such period stated by the Nominated Officer. All responses shall be placed on the Authority's website together with the Invitation to 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 Material 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. Any weighting of the evaluation criteria will be contained in **Section 1**.
  - 14.2.8. All other matters and information which the Authority in its absolute discretion deems applicable or relevant.
  - 14.2.9. The Authority may seek clarification in various ways including, but not limited to, interviews with the Contractor's key personnel who would be assigned to the Contract and appropriate senior managers.
- 14.3. 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 the 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 this 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 Supply of Materials 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 OF CONTRACT

#### 1. DEFINITIONS

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

**“Authority”** means the Peak District National Park Authority

**“CDM Regulations”** means the Construction (Design and Management) Regulations 2007 and the current approved code of practice published by the Health and Safety Executive (or any equivalent)

**“Call Off Basis”** means the ordering of Materials during the Contract Period by the Nominated Officer in such quantities and at such times as shall be stated on the relevant Purchase Order and for the avoidance of doubt the Authority shall not be obliged to purchase such Materials unless and until a Purchase Order form has been issued

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

**“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 Tender Documentation and the Form of Contract to be signed by the Parties (and each reference to ‘Contract’ shall include ‘Contract’ and vice versa)

**“Contract Commencement Date”** means the date that the Supply is to commence as set out in the Contract Particulars

**“Contract Completion Date”** means the date on which the Nominated Officer specifies in writing to the Contractor that the Supply of the Material has been completed to its satisfaction in accordance with **Section 4**.

**“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

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

**Variation”** means any omission addition or variation to the Supply in accordance with the Standard Conditions

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

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

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

**“Delivery”** means the delivery of the Material in the manner set out in the Contract Specification (if applicable)

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

**“Environmental Law”** means all laws including common law statute by-laws 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 in connection with the Supply

**“Form of Tender”** means the tender return form at **Section 1**

**“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 Supply, fire, earthquake, epidemic, nuclear disaster, act of terrorism or other natural physical disaster

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

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

**“Invitation to Tender”** means the invitation to tender for the supply of the Material

**“Itemised Costs”** means the costs for the supply of the Material in the Form of Tender

**“Landowner”** means those persons who own the freehold or leasehold title to the land on which the Material or part is to be Delivered (independent of any grazing or other rights (if any))



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

**"Material"** means Plastic Piling as set out in the Specification

**"Method Statement"** means a statement setting out the proposed methods for the Supply 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

**"Nominated Third Party"** means a third party contractor nominated by the Authority and confirmed in writing by the Nominated Officer who is able to order Plastic Piling on a Call off Basis

**"Payment"** means a payment in respect of the Supply made pursuant to **Section 4**

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

**"Plastic Piling"** means plastic piling as set out in the Specification

**"Price"** means the price set out in the Contract Particulars

**"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 at the request of the Nominated Officer detailing the progress of the supply of the Materials

**"Purchase Order"** means the Purchase Order form issued by the Nominated Officer in connection with the supply

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

**"RAMS"** means risk assessment and method statement

**"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 Supply (if requested in the Invitation to Tender) **"Schedule of Rates"** means the rates for the Supply of the Material contained in the Itemised Costs (if any)

**"Sites"** means the sites used in connection with this Contract including the Delivery Site/Donor Site/ Drop Site/Lift Site/Storage Site (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 of the Materials at **Section 1**

**"Standard Conditions"** means these conditions

**"Supply Commencement Date"** means the date of the first Purchase Order (if any)

**"Supply Programme"** means the programme for the supply of the Material provided by the Tenderer in the Tender and forming part of the Tender Documentation if requested in the Invitation to Tender

**"Target Completion Date"** means the date targeted for completion of the supply of the Materials as set out in the Contract Particulars

**"Tender"** means the tender submitted by the Tenderer and shall include the term "Tender Return" and the Form of Tender

**"Tenderer"** means the person or company submitting a tender.

**"Tender Documentation"** means any documents forming part of this Tender and the supplementary documentation (if any) supplied as part of such documentation.

**"Unsafe Act"** means any act at variance with the Method Statement that increases the potential for an accident

**"User"** means those persons granted rights over the land on which the Material or part is to be Delivered (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 during the course of the Supply (if applicable)

## 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 supply the Material and perform the Contract:
  - i. in compliance with the following 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 due skill, care and diligence that would be expected of a qualified competent and experienced person undertaking the supply of the Materials.
- b. The Materials shall be fit for purpose;
- c. The Contractor shall notify the Nominated Officer as soon as practicable and in any event within 24 hours if the Contractor is unable Supply the whole or any part of the Material or perform any of its obligations under the Contract;
- d. The Contractor shall exercise all due care and diligence whilst Supplying the Material and shall be responsible for any loss or damage caused by the Contractor's negligence or lack of care;

#### **3. Employees**

- a. The Contractor shall not engage or employ or cause to be employed 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 have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.
- f. 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. Vehicles, Equipment and Machinery**

- a. The Contractor shall at all times during the Contract Period at its own cost provide such Equipment and Machinery as is necessary for the proper performance of the Contract to the Authority's satisfaction.
- 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.
- d. The Contractor shall use no other Equipment and Machinery other than that stated in the Tender 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. Vehicular access indicated on the Location Maps is for Equipment and Machinery approved by the Nominated Officer. Access for Equipment and Machinery to environmentally sensitive or SSSI sites or soft or wet areas will only be given during the Contract Period and 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 delivery (if applicable) are kept clean of mud and other debris.

#### **5. Environmental Provisions**

- a. The performance of this Contract 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 statutes are not to be harmed or their habitat damaged.
- 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. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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).
- k. 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.

## 6. 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. Methods Statements should include operational Risk Assessments, copies of which are to be submitted with a tender (if required).
- b. 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 any RAMS.
- d. The Contractor must take the lead in ensuring the health and safety of all those involved in the Contract at the Sites.
- e. 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.
- f. 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.
- g. 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.
- h. 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).
- i. 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).
- j. 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.



- k. The Contractor must be aware that the 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.
- l. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.

#### **7. British Standards**

- a. These provisions shall apply only where any of the Material is supplied by a Contractor.
- b. Except where hereinafter 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 recognised in another Member State of the European Community (whichever is the higher), in either of which latter two alternatives the Contractor is required to furnish the Nominated Officer with supporting documentation to prove that the Materials offer guarantees of safety, standards of reliability and fitness for purpose equivalent to or in excess of the relevant British Standard Specification.
- c. In the event of the Nominated Officer (whose decision shall be final) not being satisfied that the Materials proposed 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 hereinafter specified to the contrary all workmanship is to comply with the latest British Standard Code of Practice.

#### **8. 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.

#### **9. 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 in writing and signed by the Nominated Officer and the duly authorised agent or representative of the Contractor. Contract Variations for which there is no written confirmation or on a Project Progress Report form, 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 Supply 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 proposed dates of supply of the Material.
- 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 Supply.
- 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 24 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).

#### **10. 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 of the Contract) 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.

#### 11. Value Added Tax

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.

#### 12. CDM (if applicable)

- a. The Authority and the Contractor acknowledge that they are aware and undertake to the other that in relation to the Contract and the Sites 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 will ensure that all personnel engaged in undertaking the Contract shall be competent to undertake the Contract in accordance with the CDM Regulations and shall comply with the instructions of the Authority, Nominated Officer or its CDM Co-Ordinator, so far as they relate to the CDM Regulations.
  - iii. The Contractor shall (if requested) 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.
- c. 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.

#### 13. Insurance

- a. This clause shall apply where the Contractor is Delivering Material.
- b. The Contractor shall at all times from and including the Contract 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 any other person (including for the avoidance of doubt a Landowner or Tenant)
  - 4. In respect of the replacement of the Material.



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 helicopter operations required)

- c. 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.
- d. The Contractor shall also maintain public liability insurance arising out of or in connection with any matter involving or relating to the Delivery in the sums set out above.
- e. The Contractor shall, prior to the Contract Commencement Date or Contract Date (whichever is the earlier) and at such other times as the Nominated Officer may require, supply the Nominated Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this Clause.
- f. In the event that the Contractor is in breach of this Clause the Authority shall be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

#### 14. 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 has not and shall in no circumstances hold itself out as having the power to make, vary discharge or waive any by-law or regulation of any kind.
- d. 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.

#### 15. 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;

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.

- b. Any damage or loss which may occur during the Contract Period in relation to the Materials or Equipment and Machinery on or before the Contract Completion Date or to any materials or property whatsoever of the Authority which may at any time for the purpose of any delivery (if applicable) be in the custody or use of the Contractor or sub-contractor which shall arise from the 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 supply of the Material and against all costs and proceedings in respect of any such claim. The Contractor shall also make good any loss or damage occasioned to the property of the Authority by the acts or defaults of the Contractor or his sub-contractors and reimburse the Authority for any loss suffered thereby.

#### **16. 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 Supply 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.

#### **17. Defects Liability Provisions**

- a. The Authority shall have the right at any time to inspect the Supply and the progress of the Delivery 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 such do not constitute Contract Variations).
- c. Upon the completion of the Supply the Contractor shall notify the Nominated Officer and the Nominated Officer shall in its absolute discretion notify that the Material (whether in whole or part) is satisfactory ("the Completion Certificate").
- d. In the event that the Nominated Officer cannot so notify the Contractor shall take such action as shall be agreed with the Nominated Officer (including but not limited the removal and replacement of such Material) to enable the Nominated Officer to confirm that the whole of the Material has been Supplied to its entire satisfaction.

#### **18. 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 19 (Termination)**.

#### 19. Termination

- a. The Authority shall be entitled forthwith 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)** of this Section.
  - 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, Provided That an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition.
  - 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
  - vii. 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
  - viii. The withdrawal of the Authority's funding for the Project
  - ix. 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 Supply the Material;
  - ii. (Save where a Termination Notice is served pursuant to **Clause 19 (a) (vii, viii and ix)**) 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 to the extent that such costs exceed such sums as would have been lawfully payable to the Contractor for the Supply of the Material. 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 Supply of the Material.
  - 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.

## 20. 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 Supply the Material 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

## 21. 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. As a condition of consent (but without any obligation to consent), the Authority may impose such conditions as it may require. Any assignment occurring as a result of any internal reconstruction of the Contractor that is a limited company shall not require consent Provided That the Authority shall be given prior written notice.
- c. The Contractor shall not sub-let the whole or any part of the Supply without the written consent of the Nominated Officer. As a condition of consent (but without any obligation to consent), the Authority may impose such conditions as it may require. 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 as fully as if they were acts defects or neglects of the Contractor, its agents, servants or workmen and



the Contractor shall indemnify and keep indemnified the Authority from and against any costs claims demands and liabilities howsoever arising out of or in respect of any breach by any sub-contractor its agents servants or workmen.

## 22. 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.

## 23. 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 hereto.
- c. Unless the Contract shall have already been determined or abandoned the Contractor shall in every case continue to proceed with the Supply 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.

## 24. 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 Supply of the Material including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Supply (where the same are within the power and control of the Contractor) and the Contractor shall indemnify the Authority accordingly.

## 25. 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.

## 26. 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.

## 27. 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.

## **28. Warranty**

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

## **29. Rights and Duties Reserved**

- a. 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.

## **30. Confidentiality and Data Protection**

- a. Each Party will procure that all confidential information which may already have come into the ownership, possession or control it or of a subsidiary prior to the execution of the Contract provided by the Contractor, or which may at any time hereafter until termination hereof come into the ownership, possession, or control of either of them relating to the other Party or its operation or management, or otherwise in connection with or in anticipation of the performance of the Contract (hereinafter referred to as "the Confidential Information"), shall strictly:-
  - i. not be used for any purpose other than the performance of the Contract;
  - ii. not to be disclosed during the continuance of the Contract to any third party including for the avoidance of doubt any company, organisation or individual whatsoever employed by the Contractor now or at any time in the future; and
  - iii. not after termination be used for any purpose whatever or disclosed to any third party.
- b. The receiving Party shall inform the disclosing Party immediately if it comes to the notice of the receiving Party that any confidential information has been improperly disclosed or misused.
- c. The above obligations shall cease to apply to any particular piece of Confidential Information once it becomes public knowledge other than through any act or default of the receiving Party or any person acting or employed by them or acting on their behalf.
- d. Upon termination hereof, or at the request of the Authority the receiving Party shall procure that all documents and other written material (including material on disks and tape) containing Confidential Information shall be returned (together with all copies thereof) to the disclosing Party.
- e. The Parties shall comply with the Data Protection Act 1998.
  - i.

## **31. 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 and 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

### 32. 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. The Authority shall have the absolute discretion to use the Contractor, another contractor, its own employees or any third party to Supply the Material or any part of them at any time during the Contract.
- c. Notwithstanding the Contractor's obligations to maintain a capability to Supply the Material 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 Supply at any time during the Contract Period.

### 33. Sub-contracting

- a. The Authority's prior written approval must be obtained before any Supply of the Material (in whole or in part) 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 Supplying the Material.

### 34. 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 Supply 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 1979Act.



### 35. Equality

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

### 36. 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.