

**CONTRACT FOR**  
**Installation and repair of culverts**

**At**  
**Natural England's (NE) Chippenham Fen, National**  
**Nature Reserve (NNR):**

**REF: ecm\_52926**

**DATED: 03/09/2018**

**THIS CONTRACT** is dated

**BETWEEN**

(1) **NATURAL ENGLAND** of Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX (the “**Authority**”); and

(2) [REDACTED]  
[REDACTED]

(each a “**Party**” and together the “**Parties**”).

## **BACKGROUND**

- a) The Authority requires the services set out in Schedule 1.
- b) The Authority has awarded this contract for the services to the Supplier and the Supplier agrees to provide the services in accordance with the terms of the contract.

## **AGREED TERMS**

### **1 Definitions and Interpretation**

1.1 In the Contract, unless the context requires otherwise, the following terms shall have the meanings given to them below:

‘**Approval**’: the prior written consent of the Authority.

‘**Authority Website**’: [www.naturalengland.org.uk](http://www.naturalengland.org.uk)

‘**Contract Term**’: the period from the Commencement Date to the Expiry Date.

‘**Contracting Authority**’: an organisation defined as a contracting authority in Regulation 2 of the Public Contract Regulations 2015.

‘**Data Protection Legislation**’: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

‘**Default**’: a breach by the Supplier or Staff of its obligations under the Contract or any other default, negligence or negligent statement in connection with the Contract.

‘**Dispute Resolution Procedure**’: the dispute resolution procedure set out in Clause 20.

‘**DPA 2018**’: the Data Protection Act 2018.

‘**Force Majeure**’: any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, its Staff or any other failure in the Supplier’s supply chain.

**'Fraud'**: any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Authority or any other Contracting Authority.

**'GDPR'**: the General Data Protection Regulation (Regulation (EU) 2016/679).

**'Good Industry Practice'**: standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under similar circumstances.

**'Goods'**: all products, documents, and materials developed by the Supplier or its agents, Sub-contractors, consultants, suppliers and Staff in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**'Intellectual Property Rights'**: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**'IP Materials'**: all Intellectual Property Rights which are:

- (a) furnished to or made available to the Supplier by or on behalf of the Authority; or
- (b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

**'Law'**: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the relevant Party is bound to comply.

**'LED'**: Law Enforcement Directive (Directive (EU) 2016/680).

**'Price'**: the price for the Services set out in Schedule 2.

**'Replacement Supplier'**: any third party supplier of services appointed by the Authority to replace the Supplier.

**'Staff'**: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-contractors who are engaged in providing the Services from time to time.

**‘Sub-contract’**: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**‘Sub-contractor’**: third parties which enter into a Sub-contract with the Supplier.

**‘Valid Invoice’**: an invoice containing the information set out in Clause 3.3.

**‘VAT’**: Value Added Tax.

**‘Working Day’**: Monday to Friday excluding any public holidays in England and Wales.

1.2 The interpretation and construction of the Contract is subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- (d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;
- (f) references to the Services include references to the Goods;
- (g) references to Clauses and Schedules are to clauses and schedules of the Contract; and
- (h) the Schedules form part of the Contract and have affect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

## 2 **Contract and Contract Term**

2.1 The Supplier shall provide the Authority with the services set out in Schedule 1 (the “**Services**”) in accordance with the terms and conditions of the Contract.

2.2 The Contract is effective on 10/09/2018 (the “**Commencement Date**”) and ends on 31/10/2018 (the “**Expiry Date**”) unless terminated early or extended in accordance with the Contract.

## 3 **Price and Payment**

- 3.1 In consideration of the Supplier providing the Services in accordance with the Contract, the Authority shall pay the Price to the Supplier.
- 3.2 The Authority shall:
- (a) provide the Supplier with a purchase order number ("**PO Number**"); and
  - (b) pay all undisputed sums due to the Supplier within 30 days of receipt of a Valid Invoice.
- 3.3 A Valid Invoice shall:
- (a) contain the correct PO Number;
  - (b) express the sum invoiced in sterling;
  - (c) include VAT at the prevailing rate as a separate sum or a statement that the Supplier is not registered for VAT; and
  - (d) be issued once the Services have been completed and signed off in accordance with the provisions of paragraph 1.8 of Schedule 1.
- 3.4 The Supplier shall submit a Valid Invoice to the Authority at the following addresses:  
[Accounts-Payable.neg@sscl.gse.gov.uk](mailto:Accounts-Payable.neg@sscl.gse.gov.uk) or  
SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ
- 3.5 The Supplier acknowledges that:
- a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Authority will not be liable to pay the Supplier any additional VAT;
  - b) invoices which do not include the information set out in Clause 3.3 will be rejected.
- 3.6 Any late payment by the Authority of an undisputed Valid Invoice will be subject to interest at the rate of 3% above the base rate from time to time of Barclays Bank plc.
- 3.7 The Supplier shall not suspend provision of the Services if any payment is overdue.
- 3.8 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract.

#### **4 Extension of the Contract**

- 4.1 The Authority may extend the Contract in accordance with paragraph 1.5 of Schedule 1.

#### **5 Warranties and Representations**

- 5.1 The Supplier warrants and represents for the Contract Term that:

- (a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Contract and to provide the Services;
- (b) the Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
- (g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;
- (h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
- (i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (j) it will comply with its obligations under the Immigration, Asylum and Nationality Act 2006.

5.2 The Supplier warrants and represents that in the 3 years prior to the date of the Contract:

- (a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;
- (b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and
- (c) it has complied with all relevant tax laws and regulations and no tax return submitted to a relevant tax authority has been found to be incorrect under any anti-abuse rules.

## 6 Service Standards

- 6.1 The Supplier shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.
- 6.2 If the Services do not meet the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as may be specified by the Authority.
- 6.3 The Authority may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods. If the Authority rejects any of the Goods it may (without prejudice to its other rights and remedies) either:
- (a) have the Goods promptly either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until the repair or replacement has occurred; or
  - (b) treat the Contract as discharged by the Supplier's breach and obtain a refund (if the Goods have already been paid for) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining replacements.
- 6.4 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 6.3.
- 6.5 If the Authority issues a receipt note for delivery of the Goods it shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.
- 6.6 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for 3 years from the date of acceptance. If the Authority shall within such guarantee period or within 30 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall choose) free of charge.
- 6.7 Any Goods rejected or returned by the Authority pursuant to this Clause 6 shall be returned to the Supplier at the Supplier's risk and expense.

## **7 Termination**

- 7.1 The Authority may terminate the Contract at any time by giving 30 days written notice to the Supplier.
- 7.2 The Authority may terminate the Contract in whole or in part by notice to the Supplier with immediate effect and without compensation to the Supplier if:
- (a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of

managing his affairs within the meaning of Part VII of the Mental Health Act 1983;

- (b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;
- (c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;
- (d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;
- (e) subject to Clause 7.3, the Supplier commits a Default;
- (f) there is a change of control of the Supplier; or
- (g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Authority).

7.3 If the Supplier commits a Default which is capable of being remedied, the Authority may terminate the Contract pursuant to Clause 7.2(e) only if the Supplier has failed to remedy the Default within 20 Working Days of being notified of the Default by the Authority.

## **8 Consequences of Expiry or Termination**

8.1 If the Authority terminates the Contract under Clause 7.2:

- (a) and then makes other arrangements for the supply of the Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term; and
- (b) no further payments shall be payable by the Authority to the Supplier (for the Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under Clause 8.1(a).

8.2 On expiry or termination of the Contract the Supplier shall:

- (a) co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier; and
- (b) procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services) shall be delivered promptly to the Authority.



8.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 3, 8 to 13, 17, 26 and 28.

## **9 Liability, Indemnity and Insurance**

9.1 Notwithstanding any other provision in the Contract, neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation; or
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.

9.2 The Supplier shall indemnify and keep indemnified the Authority against all claims, proceedings, demands, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise in tort (including negligence) default or breach of the Contract to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or Fraud of itself or of Staff or Sub-contractors save to the extent that the same is directly caused by the negligence, breach of the Contract or applicable law by the Authority.

9.3 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

9.4 Subject to Clause 9.1:

- (a) neither Party is liable to the other for any:
  - (i) loss of profits, business, revenue or goodwill;
  - (ii) loss of savings (whether anticipated or otherwise); and/or
  - (iii) indirect or consequential loss or damage
- (b) each Party's total aggregate liability in respect of all claims, losses damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall not exceed £1,000,000 (one million pounds) or 10x the value of the Contract whichever is the lower amount.

9.5 The Supplier shall, with effect from the Commencement Date and for such period as necessary to enable the Supplier to comply with its obligations under the Contract, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be

incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Term and for a minimum of 6 years following the end of the Contract.

- 9.6 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 9.7 If the Supplier fails to comply with Clauses 9.5 and 9.6 the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 9.8 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 9.9 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **10 Confidentiality and Data Protection**

- 10.1 Subject to Clause 10.2, unless agreed otherwise in writing, the Supplier shall, and shall procure that Staff shall, keep confidential all matters relating to the Contract.
- 10.2 Clause 10.1 shall not apply to any disclosure of information:
  - (a) required by any applicable law;
  - (b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;
  - (c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 10.1; or
  - (d) which is already lawfully in the Supplier's possession prior to its disclosure by the Authority.
- 10.3 Parties shall, and shall procure that their Staff and employees shall, comply at all times with Data Protection Legislation.
- 10.5 The Authority may disclose confidential information of the Supplier:
  - (a) when required by applicable law;
  - (b) on a confidential basis to any central Government body for any proper purpose of the Authority or of the relevant central Government body;
  - (c) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- (d) the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (e) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Authority for any purpose relating to or connected with this Contract;
- (f) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- (g) 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 Contract.

10.6 The Supplier shall:

- a) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to Clause 10.4;
- b) not knowingly or negligently do or omit to do anything which places the Authority in breach of its obligations under the DPA; and
- c) provide the Authority with such information as it may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA.

## 11 Freedom of Information

- 11.1 The Supplier acknowledges that the Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the “**Information Acts**”) and may be required to disclose certain information to third parties including information relating to this Contract pursuant to the Information Acts.
- 11.2 If the Authority receives a request for information relating to the Contract pursuant to either of the Information Acts, the Authority may disclose such information as necessary in order to comply with its duties under the Information Acts.

## 12 Intellectual Property Rights

- 12.1 The IP Materials shall vest in the Authority and the Supplier shall not, and shall procure that Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for the Supplier to provide the Services.
- 12.2 The Supplier shall indemnify and keep indemnified the Authority and the Crown against all actions, claims, demands, losses, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur arising from any infringement or alleged infringement of any Intellectual Property Rights by the availability of the Services except to the extent that they have been caused by or contributed to by the Authority’s acts or omissions.

## 13 Prevention of Corruption and Fraud

- 13.1 The Supplier shall act within the provisions of the Bribery Act 2010.

- 13.2 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of money from the Authority.
- 13.3 The Supplier shall notify the Authority immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

#### **14 Discrimination**

- 14.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 14.2 The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

#### **15 Environmental and Ethical Policies**

- 15.1 The Supplier shall provide the Services in accordance with the Authority's policies on the environment, sustainable and ethical procurement and timber and wood derived products, details of which are available on the Authority Website.

#### **16 Health and Safety**

- 16.1 Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.
- 16.2 While on the Authority's premises, the Supplier shall comply with the Authority's health and safety policies.
- 16.3 The Supplier shall notify the Authority immediately if any incident occurs in providing the Services on the Authority's premises which causes or may cause personal injury.
- 16.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1976, and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's premises when providing the Services.
- 16.5 The Supplier's health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) shall be made available to the Authority on request.
- 16.6 For the avoidance of doubt, the Supplier shall provide to the Authority all health and safety documents and policies reasonably requested, including those identified and referred to in Schedule 1.

#### **17 Inspection, Monitoring and Audit**

- 17.1 The Authority may monitor and inspect the provision of the Services and the Supplier shall co-operate, and shall procure that Staff and any Sub-contractors co-operate, with the Authority in carrying out the monitoring at no additional charge to the Authority.
- 17.2 The Supplier shall keep and maintain until 6 years after the end of the Contract Term full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall allow the Authority, the

National Audit Office and the Comptroller and Auditor General reasonable access to those records and on such terms as they may request.

- 17.3 The Supplier agrees to provide, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

## **18 Transfer and Sub-Contracting**

- 18.1 The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval.

- 18.2 If the Supplier enters into any Sub-contract in connection with the Contract it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the Contract;
- (b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;
- (c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;
- (d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.

- 18.3 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority or any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (b) any private sector body which performs substantially any of the functions of the Authority.

- 18.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.

## **19 Variation**

- 19.1 Subject to the provisions of this Clause 19, the Authority may change the Specification provided that such change is not a material change to the Specification (a "**Variation**").

- 19.2 The Authority may request a Variation by notifying the Supplier with sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement it. Variations agreed by the Parties shall be made in writing.

- 19.3 If the Supplier is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Supplier to fulfil its obligations under the Contract without the Variation;
- or

(b) refer the request to be dealt with under the Dispute Resolution Procedure.

## **20 Dispute Resolution**

- 20.1 The Parties shall attempt in good faith to resolve any dispute between them arising out of the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall include the escalation of the dispute to the Supplier's representative and the Authority's commercial director or equivalent.
- 20.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 20.3 If the dispute cannot be resolved by the Parties pursuant to Clause 20.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clauses 20.5 to 20.10.
- 20.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.
- 20.5 A neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree a Mediator within 10 Working Days after a request by one Party or if the chosen Mediator is unable to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 20.6 The Parties shall, within 10 Working Days of the appointment of the Mediator, meet the Mediator to agree a programme for the disclosure of information and the structure to be adopted for negotiations. The Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 20.7 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 20.8 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 20.9 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 20.10 If the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to the Courts.
- 20.11 Subject to Clause 20.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 20.1 and 20.5 to 20.10 have been completed.

## **21 Supplier's Status**

21.1 Nothing in the Contract shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent for the other for any purposes except as specified by the terms of the Contract.

21.2 The Supplier shall not (and shall ensure that Staff shall not) say or do anything that might lead any person to believe that the Supplier is acting as the agent, partner or employee of the Authority.

## **22 Notices**

22.1 Notices shall be in writing and in English and shall be deemed given if signed by or on behalf of a duly authorised officer of the Party giving the notice and if left at, or sent by first class mail to the address of the receiving Party as specified in the Contract (or as amended from time to time by notice in writing to the other Party).

## **23 Entire Agreement**

23.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, arrangements and undertakings.

## **24 Third Party Rights**

24.1 No term of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a Party other than the Crown.

## **25 Waiver**

25.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

25.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

25.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **26 Publicity**

26.1 The Supplier shall not without Approval:

- (a) make any press announcements or publicise the Contract or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement.

26.2 The Authority may publish the Contract on the Authority Website or another website at its discretion.

## **27 Force Majeure**

- 27.1 Except to the extent that the Supplier has not complied with any business continuity plan agreed with the Authority, neither Party shall be liable for any failure to perform its obligations under the Contract if, and to the extent, that the failure is caused by act of God, war, riots, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding any industrial dispute relating to the Supplier, Staff or Sub-contractors.
- 27.2 If there is an event of Force Majeure, the affected Party shall use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

## **28 Governing Law and Jurisdiction**

- 28.1 The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales.
- 28.2 The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **29 Electronic Signature**

- 29.1 Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000.
- 29.2 Acceptance of the offer comprised in this Agreement must be made **within [7] days** from the date of this Award Letter and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("**Bravo**").
- 29.3 No other form of acknowledgement will be accepted.



## SCHEDULE 1

### MINOR WORKS

#### 1. Performance

- 1.1 The Supplier shall comply with The Construction (Design and Management) Regulations 2015 in so far as they apply to the Services.
- 1.2 The Supplier shall provide the labour and plant and machinery necessary to carry out the Services.
- 1.3 The Supplier shall maintain and keep daily records of labour, plant and materials deployed for the provision of the Services and shall on request promptly provide copies of such records to the Authority.
- 1.4 The Authority grants the Supplier a licence to occupy for the sole purpose of undertaking the Services.
- 1.5 If it becomes apparent that the Services will not be completed by the end of the Contract Term (or any later date fixed in accordance with the provisions of this clause and "Contract Term" shall be construed accordingly throughout this Schedule 1) for reasons beyond the control of the Supplier then the Supplier shall, in writing, notify the Authority who shall endeavour to make, in writing, such extension of time for completion as the Authority feels, at its absolute discretion, may be fair and reasonable in the circumstances. For the avoidance of doubt, any default of the Supplier, or of others employed or engaged by or under him, for or in connection with the Services or of any supplier of goods or materials for the Services, shall be deemed to be a reason within the control of the Supplier.
- 1.6 Without prejudice to any other deductions which are permitted to be made by the Authority under this Contract, the Supplier shall be liable to pay to the Authority delay damages at the rate identified in Schedule 2 for any delay in completing the Services beyond the end of the Contract Term. For the avoidance of doubt, if no such rate is stated, the Authority shall be entitled to claim its actual losses arising out of any delay.
- 1.7 The Supplier shall notify the Authority in writing when he believes the Services are likely to be completed within the next seven days. The Authority shall certify the date when, in its opinion, it is satisfied the Services have reached completion in accordance with paragraph 1.8 below, and following this certification, the Supplier shall then issue a Valid Invoice.
- 1.8 As soon as reasonably practicable following notification being received pursuant to paragraph 1.7 above that the Services are likely to be completed within the next seven days:
  - 1.8.1 The Supplier shall provide to the Authority copies of the relevant documents relating to the works and Services included any/all guarantees, warranties and maintenance agreements, or any other documentation relating to the works or Services that the Authority reasonably requires.
  - 1.8.2 the Parties shall agree a time for the Authority (or an expert appointed by the Authority (an "Expert")) to inspect the works and Services, with a view to signing off and certifying that the Services are completed to a satisfactory standard and in accordance with both the terms of the Contract and applicable laws and regulations.
  - 1.8.3 In the event that the Authority or its Expert, acting reasonably and with reference to the terms of the Contract, any applicable laws and regulations

and the documents provided pursuant to paragraphs 1.8.1 above, identify items of works or elements of the Services that have not been completed to a satisfactory standard ("Snagging Items") the Parties shall agree a timetable for these Snagging Items to be made good by the Supplier at its own cost. The Supplier shall use reasonable endeavours to action and make good all Snagging Items as soon as possible. Once the Supplier has completed the necessary works associated with the Snagging Items, the Parties shall follow the process set out in this paragraph 1.8 until the Authority or its Expert is able to sign off and certify that the works and Services are completed in accordance with both the terms of the Contract and applicable laws and regulations, and all Snagging Items have been remedied.

- 1.8.4 Once the Authority or its Expert is able to sign off the works and Services with no Snagging Items, the Supplier shall issue the Valid Invoice associated with the works and Services.

## **2. Authority Instructions**

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

## **3. Quality and Defects**

- 3.1 In addition to the rights set out in clause 6.3 of the main agreement, if the Supplier is in Default of its obligations to provide the Services (or any part of them) in accordance with the Contract then, without prejudice to any other right or remedy available to the Authority under the Contract or otherwise, the Authority may elect one or more of the following remedies:
- 3.1.1 without determining the Contract in whole or in part, itself provide or hire another person or persons to provide all or any part of the Services until the Supplier has proved to the reasonable satisfaction of the Authority that the Services will be provided in accordance with the terms of the Contract, and in either case the Supplier shall pay the reasonable costs so incurred by the Authority; or
- 3.1.2 without determining the Contract in whole or in part, withhold from payment to the Supplier or recover as a sum of money due from the Supplier the Price or any portion thereof that are allocated to the Default or non-conforming Services.
- 3.2 All materials and goods used in relation to the Services shall be of the kinds and standards specified in this Schedule 1 or as agreed in writing with the Authority. If no specification is provided then the Supplier shall ensure that any goods or materials provided or used for the purposes of the Services shall be of good quality and shall meet the relevant British Standards.
- 3.3 The Supplier shall at his own cost take all necessary measures to prevent injury loss or damage to the Services or any adjacent properties or areas.

- 3.4 During the Contract Term (including any extension of the same as agreed between the Parties) the Supplier shall keep the working environment clear of any rubbish, debris and surplus materials produced in connection with the Services and shall keep access at and to the working environment clear at all times.
- 3.5 On completion of the Services the Supplier shall immediately clear the Premises of any rubbish, debris, surplus materials produced in connection with the Services so as to leave the working environment in a clean and tidy condition to the satisfaction of the Authority.

#### **4. Risk / Property**

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

## SPECIFICATION OF SERVICES

NE appointment under Construction (Design and Management) Regulations 2015 the role of Principle Contractor and Designer to Supplier, [REDACTED] [REDACTED] [REDACTED] to cover:

1) Shall build up soil over two existing culverts to raise the level at position 1 & 4.

At position 1 to bring in stone to provide additional cover, approximately 300mm over the culvert using granite -20mm to dust type one (circa 20 ton) will be used. Compact and grade the surface.

At position 4 on map –To make up ground on the cross over point of the two ditches and reed beds using site won material from reed bed, loaded into a tracked dumper and taken to the tip area for spreading and compacting using the excavator. Approximately 300mm – 500mm cover required.

Following successful work there will be;

- No impediment to the flow of water
- Farm machinery or livestock can cross both culverts safely.

2) Shall install two bridges with steels and the timber being supplied by Natural England at positons 2 & 3 on map

- create an abutment base either side of the drainage channel using the old steel beams by cutting them to the require length.
- Place crossing steels on abutment and weld into place.
- The steels will then be drilled and the oak sleepers attached to form the bridge decking.
- The ground will then made up to enable safe movement on/ off the bridge.

Following successful installation there will be;

- No impediment to the flow of water
- Livestock can cross the bridges safely

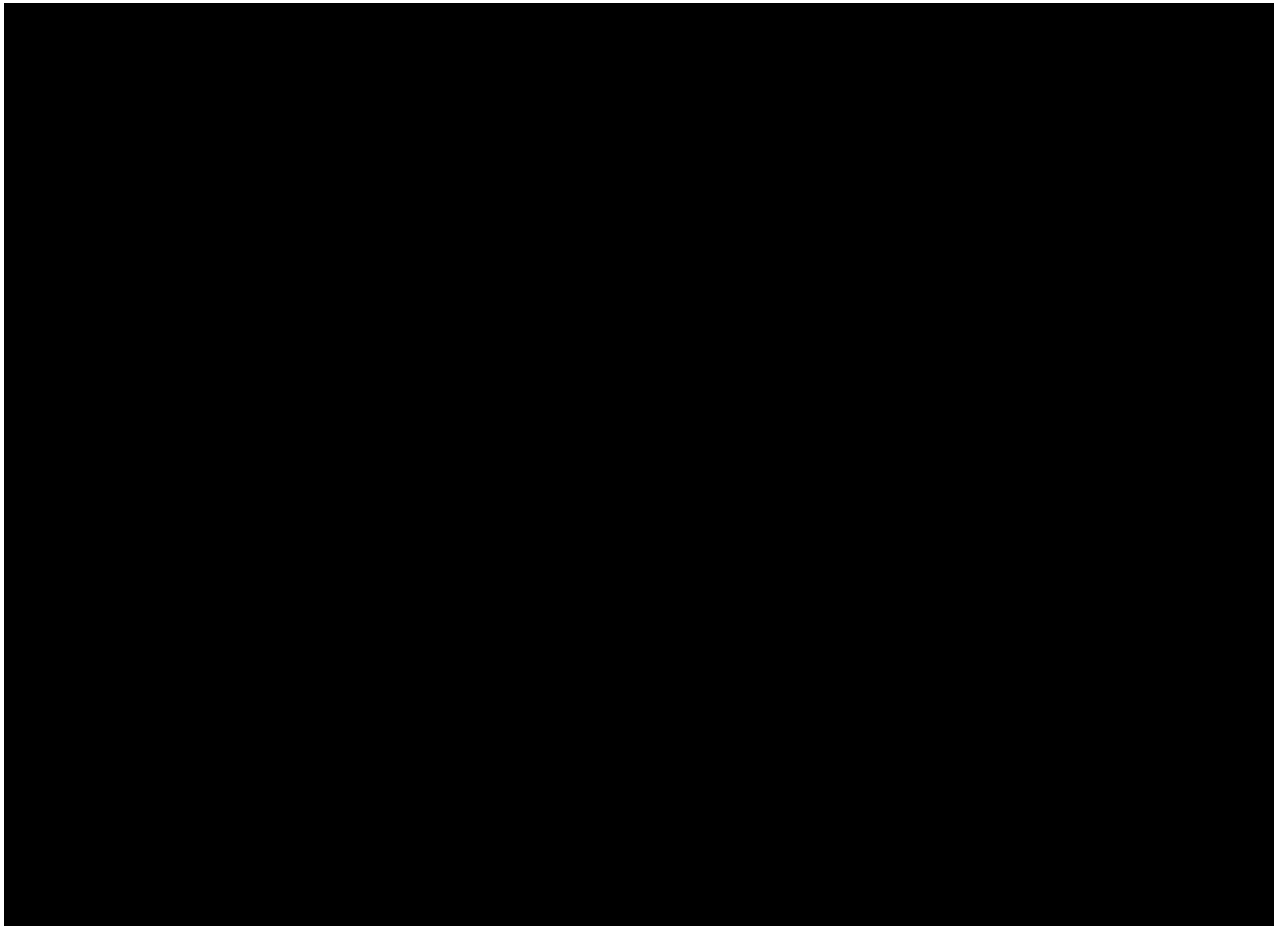
Key Timescales;

- Work to commence September and to be completed by end of October 2018

### Supporting Documentation

- All Risk assessments
- Lone work policy & procedures.
- Copies of certification / training in use of the equipment
- A copy of your public liability insurance certificate
- Health & Safety Policies/ certificates.

Map of site and works location.



Construction Plan

|      |   |
|------|---|
|      | <b>CDM 2015 - Construction Phase Plan</b><br><br>Chippenham Fen NNR – Infrastructure Project<br>Ref: 21585                  |
| PLAN | <b>Client details:</b><br>Natural England- [REDACTED]<br>[REDACTED]<br>[REDACTED]<br>[REDACTED]<br>[REDACTED]<br>[REDACTED] |
|      | <b>Principal Designer Details:</b><br>Work has been designed between [REDACTED]   |
|      | <b>Principal Contractor Details:</b><br>[REDACTED]<br>[REDACTED]<br>[REDACTED]  |

|                             |   |
|-----------------------------|---|
|                             | <p><b>Description of work/ project:</b><br/>         Works to be undertaken at Chippenham fen National Nature Reserve</p> <ul style="list-style-type: none"> <li>• Installation of 2 sleeper bridges across ditches 3-4m wide and 1-2m deep.</li> <li>• Making up of surface at 2 culverts using brought in stone and locally found soil.</li> </ul> <p>A 2 man team using a digger and tracked dumper.</p>   |
| WORKING TOGETHER / ORGANISE | <p><b>Key dates:</b> Between [REDACTED] dependant on site conditions.<br/>         Work to be cancelled if site is too wet.</p>   |
|                             | <p><b>Key members of the project team during construction and their role/ responsibilities</b> <i>(Insert name, role and summary of responsibilities)</i></p> <p>[REDACTED] Undertake site induction. Provide whole site risk assessment. Ensure site is safe for work. Maintain and provide welfare facilities. Record all H&amp;S incidents.</p> <p>[REDACTED] – Contractor- To ensure work is carried out to specification. To ensure all work is undertaken safely. Responsible for all plant equipment brought onto site. Manage [REDACTED] staff and their compliance with H&amp;S requirements</p> <p><b>How the work will be managed safely</b> <i>(Include details of the site rules, arrangements to ensure cooperation between project team members and coordination of their work (eg regular site meetings), site inductions, welfare facilities and fire and emergency procedures. Also include arrangements for the control of any specific risks such as falls from height / collapse of structures/ handling heavy components)</i></p> <p><b>Key Arrangements:</b></p> <p>[REDACTED] to provide H&amp;S induction when contractors arrive on site.<br/>         Induction will include</p> <ul style="list-style-type: none"> <li>• Whole site risk assessment and site hazard map.</li> <li>• Fire &amp; emergency plans</li> <li>• Site access controls.</li> <li>• Welfare facilities</li> <li>• Incident reporting</li> </ul> <p><u>Project meetings</u><br/>         CH will be on site most days and contactable via telephone everyday.<br/>         Site meeting to be undertaken on the completion of each culvert and before plant moves to next task.</p> <p><u>Supervision &amp; work management</u><br/>         CH provided specification based on discussion with [REDACTED] however how this is actually achieved is upto the skills of [REDACTED] staff.<br/>         CH will not tell contractors how to operate machine or undertake task.<br/>         CH will stop work if he witnesses unsafe or dangerous actions e.g. not wearing suitable PPE, not operating equipment safely etc</p> <p>[REDACTED] to manage all construction staff on project. [REDACTED] to be responsible</p> |

for safe completion of the task to the specification agreed during tender process. [REDACTED] is responsible for all plant equipment used in project including servicing, operation and storage. [REDACTED] to ensure all contractors are trained and equipped to a level required to undertake the task. [REDACTED] responsible for all refuelling and fuel storage equipment used in the project.

**Key safety risks on this project are:**

Using heavy plant equipment.

Working near water filled ditches – Ditches on Chippenham fen are relatively narrow (4m) and shallow (1-2m).

Working near water possible zoonosis.

Working on fen – known Tick area and possibility of contracting Lyme's disease.

Manual handling of railway sleepers and sandbags causing musco-skeletal injury.

## SCHEDULE 2

### PRICES

|   |  |
|---|--|
| <b>As per Quote and dated 02/08/18, Total Price is [REDACTED] + VAT</b>                         |  |
| [REDACTED]  |  |
| <b>Breakdown of costs as per quote:</b>   |  |
| Deliver, supply additional 300mm of granite 20mm to dust type one stone over the culvert pipes. | <b>Total Price is [REDACTED] + VAT</b> |
| To install two bridges with steels and the timber being supplied by Natural England             | <b>Total Price [REDACTED] + VAT</b>    |
| To make up the drain junction   | <b>Total Price [REDACTED] + VAT</b>    |