

General Terms and Conditions for Chargeable Services

PARTIES

- (1) Natural England of Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX ("**Natural England**")
- (2) The customer, identified on the Quotation ("**Customer**")

BACKGROUND

- A. Natural England is an Executive Non-Departmental Public Body responsible to the Secretary of State for Environment, Food and Rural Affairs. Its purpose is to protect and improve England’s natural environment and encourage people to enjoy and get involved in their surroundings.
- B. As part of this role Natural England is able to provide discretionary training and advice on a range of areas which fall within its remit.
- C. The Customer wishes to obtain and Natural England has agreed to provide the Services set out in the Quotation subject to the terms and conditions of the Agreement.
- D. In requesting and accepting the Services provided by Natural England, the Customer acknowledges that the content of any advice or training is advisory only and that it shall not be deemed to bind or in any other way restrict Natural England in performing its statutory functions.

1. DEFINITIONS AND INTERPRETATIONS

1.1 The terms and expressions as set out below shall have the meanings ascribed therein:

Actual Time	the number of staff hours/days taken to complete the Services.
Agreed Delivery Period	the duration of time (in days/weeks) agreed between the Customer and Natural England for the delivery of the Services and included in the Quotation.

Agreement	the agreement between Natural England and the Customer for the supply of Services in accordance with these General Terms, the Special Terms, the attached Quotation and any other documents (or parts thereof) specified by Natural England.
Charges	the charges and/or charging mechanism as identified in the Quotation.
Commencement Date	the date specified in the Quotation.
Contract Period	means the period of duration of the Agreement from the Commencement Date as set out in the Quotation, or in accordance with the terms of the Agreement.
Confidential Information	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including the information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.
Default	means any breach of the obligations of either party (including but not limited to fundamental or persistent breach or breach of a fundamental term) or any default act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such party is liable to the other.

General Terms	means these terms and conditions.
Quotation	the quotation provided by Natural England setting out the Services, Charges and other details relevant to the Services to which these terms and conditions and any Special Terms (where applicable) are attached. For the avoidance of doubt no Quotation shall be binding on Natural England until and unless both the Customer and Natural England have signed that Quotation.
Representative	the representative of each party to the Agreement as initially identified in the Quotation and thereafter as may be notified by the relevant party from time to time.
Services	the services to be supplied by Natural England to the Customer under the Agreement, and as more particularly described in the Quotation and applicable Special Terms where appropriate.
Special Terms	such special terms of Natural England which apply to the specific Services to be provided by Natural England.
Statutory Consultee	Natural England's role as a consultee as specified in the relevant legislation.

- 1.2 Clause and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 References to clauses are to the clauses of the Agreement.
- 1.11 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **PRECEDENCE**

- 2.1 In the event of and only to the extent of any conflict between the Quotation, these General Terms or the Special Terms, the conflict shall (unless otherwise specified in these General Terms) be resolved in accordance with the following order of precedence:
 - 2.1.1 these General Terms;
 - 2.1.2 the Special Terms;
 - 2.1.3 the Quotation; and
 - 2.1.4 any other document referred to in the Agreement.

3. **DURATION**

- 3.1 The Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with the terms of the Agreement, shall end on the last day of the Contract Period.

4. **SERVICES**

- 4.1 In consideration of the Customer paying the Charges pursuant to clause 6, Natural England shall provide the Services to the Customer, together with any related services or advice provided during the term of the Agreement and as otherwise agreed between the parties as being provided by Natural England in accordance with clause 13.
- 4.2 In providing the Services, Natural England agrees to use reasonable efforts to meet any Agreed Delivery Period or timescale as may be agreed between the parties from time to time pursuant to clause 13. Notwithstanding the above Natural England does not guarantee to meet specific times and dates and, as such, time shall not be of the essence.
- 4.3 In requesting the Services the Customer agrees that any materials or advice given by Natural England officers pursuant to the Agreement does not constrain or bind Natural England in respect of its statutory functions or its role as a Statutory Consultee.

5. **CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
- 5.1.1 ensure that any information it provides Natural England is complete and accurate;
 - 5.1.2 co-operate with Natural England in all matters relating to the Services;
 - 5.1.3 if applicable, provide Natural England, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Natural England for the provision of the Services; and
 - 5.1.4 provide Natural England with such information and materials as Natural England may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects.
- 5.2 If Natural England's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 5.2.1 Natural England shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Natural England's performance of any of its obligations;
- 5.2.2 Natural England shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Natural England's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- 5.2.3 the Customer shall reimburse Natural England on written demand for any costs or losses sustained or incurred by Natural England arising directly or indirectly from the Customer Default.

6. CHARGES AND PAYMENT

- 6.1 The Customer shall pay the Charges in accordance with this clause 6.
- 6.2 In the event that the Quotation does not identify a fixed Charge then the Charges shall be calculated by reference to the Actual Time against the published tariff set out on the Natural England website.
- 6.3 All Charges shall be deemed exclusive of VAT or any other relevant tax payable in respect of the Services. The Customer agrees to pay any such VAT or other tax in addition to the Charges upon receipt of an appropriate invoice.
- 6.4 Subject to clause 6.5, Natural England shall invoice the Customer for the Charges at such times as are specified in the Quotation. All invoices are payable within 28 days of the date of issue.
- 6.5 Notwithstanding clause 6.4, Natural England shall be entitled to invoice immediately upon commencement of the Services.

7. WARRANTIES AND DISCLAIMERS

- 7.1 Natural England warrants and represents that it shall render the Services with reasonable skill, care, and diligence and in accordance with its own established internal procedures.

- 7.2 The Customer warrants that the information it provides to Natural England shall, to the best of its knowledge, be complete and accurate.
- 7.3 Save in respect of the warranty provided for in clause 7.1, Natural England hereby excludes all other warranties and representations whether implied by law or otherwise in so far as the law permits.
- 7.4 Notwithstanding the generality of clause 7.1 above, and with reference to clause 4.3, Natural England hereby excludes any warranty that the advice provided by its officers represents Natural England's opinion or otherwise binds Natural England when acting as a Statutory Consultee and any training provided is advisory only and it shall not be deemed to bind or in any other way restrict Natural England in performing its statutory functions.

8. **TERMINATION**

- 8.1 Without prejudice to any other rights or remedies which Natural England may have, Natural England may terminate the Agreement:
- 8.1.1 immediately on notice in writing where, in Natural England's reasonable opinion, the provision of the Services will or is likely to conflict with Natural England's statutory obligations or with Natural England's obligations as Statutory Consultee;
 - 8.1.2 immediately if the information provided by the Customer is insufficient, in Natural England's reasonable opinion, to enable Natural England to provide the Services; or
 - 8.1.3 by giving one months' written notice to the Customer.
- 8.2 Natural England may terminate the Agreement by notice in writing with immediate effect where the Customer:
- 8.2.1 undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
 - 8.2.2 becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation or suffers or allows any execution, whether legal or equitable, to be levied on

its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

8.3 Either party may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the other party with immediate effect if that other Party commits a Default and if:

8.3.1 the Default is not remedied within 30 days, or such other period as may be agreed between the parties, after issue of a written notice specifying the Default and requesting it to be remedied;

8.3.2 the Default is not capable of remedy; or

8.3.3 the Default is a fundamental breach of the Agreement.

8.4 In the event Natural England has the right to terminate the Agreement pursuant to clause 8.1.1, Natural England may choose to suspend delivery of all or part of the Services rather than exercising the right to terminate. Such suspension shall continue until such time as Natural England notifies the Customer that the actual or likely conflict has ceased. For the avoidance of doubt, if Natural England only suspends part of the Services, the remaining Services shall continue to be provided in accordance with the Agreement.

8.5 For the avoidance of doubt, any suspension pursuant to clause 8.4 shall not have the affect of suspending any obligations on the Customer to pay amounts due and payable pursuant to clause 6.

9. **CONSEQUENCES OF TERMINATION**

9.1 On termination of the Agreement for whatsoever reason, the Customer shall pay to Natural England any sums due and reasonably incurred up to the date of termination.

10. **LIMITATION OF LIABILITY**

10.1 Neither party excludes or limits liability to the other for death or personal injury caused by its negligence or for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or any such liability which it is not permissible to exclude by law.

- 10.2 Subject to clause 10.1 and clause 10.5, Natural England's total liability arising under, or in connection with, the Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to £50,000.
- 10.3 Subject to clause 10.1, the Customer's total liability arising under, or in connection with, the Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to £100,000.
- 10.4 Subject to clause 10.1, neither party will be liable to the other party for:
- 10.4.1 any indirect, special or consequential loss or damage; or
- 10.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 10.5 Furthermore, Natural England hereby excludes all liabilities, to the fullest extent permitted by law, arising from the Customer's reliance on any guidance, training or any advice provided by Natural England's officers pursuant to the Agreement.

11. **FREEDOM OF INFORMATION AND DATA PROTECTION**

- 11.1 The Customer acknowledges that Natural England is subject to the requirements of the Code of Practice on Access to Government Information ("Code"), Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"). Therefore Natural England may be obliged to release documents in response to an FOIA or EIR request including any file notes. Natural England cannot therefore guarantee confidentiality.
- 11.2 In respect of any FOIA or EIR request, Natural England shall be responsible for determining at its absolute discretion whether any information, whether commercially sensitive information or otherwise, is exempt from disclosure in accordance with the provisions of the Code, FOIA or the EIR or is to be disclosed in response to a request for information.
- 11.3 In responding to a request for information, including information in connection with the Agreement (including but not limited to tender documents, subsequent contractual information or information classified as confidential or sensitive) Natural England will, where in its absolute discretion it deems necessary, use reasonable endeavours to consult the Customer. Notwithstanding this the Customer

acknowledges that Natural England may, in accordance with the Code, disclose information concerning the Customer or the Services without consulting the Customer, or following consultation with the Customer having taken its views into account provided that Natural England shall take reasonable steps where appropriate to give the Customer advance notice, or failing that, to draw the disclosure to the Customer's attention after any such disclosure.

11.4 Both parties agree to comply with their respective obligations under the Data Protection Act 1998.

11.5 The provisions of this clause shall continue to apply after termination of the Agreement.

12. **CONFIDENTIALITY**

12.1 Each party:

12.1.1 shall treat all Confidential Information belonging to the other as confidential and safeguard it accordingly; and

12.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

12.2 This clause 12 shall not apply to Confidential Information which:

12.2.1 is or becomes publicly available (otherwise than by a breach of any obligation of confidentiality); or

12.2.2 was known to a party, without restriction as to its disclosure, before the information was disclosed to it by the other party; or

12.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

12.2.4 is required to be disclosed by law including any requirement for disclosure under the DPA, FOIA or EIR; or

12.2.5 is independently developed by a party without direct or indirect access to, or use or knowledge of, the information disclosed to it by the other party.

12.3 Notwithstanding clauses 11 and 12 nothing shall prevent Natural England from providing a copy of any advice or training materials provided under the Agreement to any other statutory body.

12.4 Except as expressly stated in the Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

12.5 The provisions of this clause shall continue to apply after termination of the Agreement.

13. ALTERATION OF REQUIREMENT

13.1 No variation of the Agreement or of any document referred to in it shall be effective unless the costs of the variation are agreed and details of the variation are agreed in writing, titled "Contract Variation" and signed by both parties.

14. CORRUPT GIFTS AND PAYMENTS

14.1 The Customer shall not offer or give, or agree to give, to any employee, agent, servant or representative of Natural England any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with Natural England, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Customer is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010.

15. NATURAL ENGLAND MATERIALS

15.1 All intellectual property rights in any information or material introduced by one party to the other party pursuant to the Agreement shall remain the property of the party that owned such intellectual property rights prior to such introduction.

15.2 Natural England hereby grants to the Customer a non-exclusive licence to use the materials and other information, provided by Natural England solely for its internal business purposes to the extent reasonably necessary to benefit from the Services.

15.3 The Customer shall not delete or remove any proprietary notices or disclaimers or any other notice contained within or relating to any written advice or training materials produced pursuant to the Agreement.

16. **WAIVER**

16.1 Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by Law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

16.2 No single or partial exercise of any right or remedy provided under the Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

16.3 Except as otherwise expressly provided by the Agreement, all remedies available to either party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

16.4 A waiver (which may be given subject to conditions) of any right or remedy provided under the Agreement or by Law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

17. **SEVERABILITY**

17.1 If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, such provision shall be severed and the other provisions will remain in force and effect as if the Agreement had been executed with such invalid, illegal or unenforceable provision eliminated.

18. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

18.1 A person who is not a party to the Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

19. **DISPUTE RESOLUTION**

19.1 Any disputes arising in connection with the Agreement will normally be resolved amicably at working level. In the event of failure to reach consensus between the parties then such failure shall be handled in the following manner:

19.1.1 the dispute shall in the first instance be referred to Natural England's Chief of Legal Services at Natural England, Area 3A Nobel House, 17 Smiths Square, London SW1P 3JR, and to the Customer's nominated equivalent officer for resolution at a meeting to be arranged as soon as practicable after such referral, but in any event within ten business days;

19.1.2 if the dispute has not been resolved following a referral in accordance with 19.1.1 the parties shall settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

20. **ENTIRE AGREEMENT**

20.1 The Agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.

20.2 Each party warrants to the other party that, in entering into the Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement or those documents.

20.3 Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.

21. **SCOPE OF AGREEMENT**

21.1 Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

22. **NOTICE**

- 22.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered personally, by first class post or by commercial courier, to each party's Representative required to receive the notice at its address as set out in the Quotation or at such other address as the relevant party may specify by notice in writing to the other.
- 22.2 The provisions of this clause shall not apply to the service of any process in any legal action or proceedings where the normal legal rules as to delivery will apply.

23. **LAW AND JURISDICTION**

- 23.1 The Agreement and all disputes or claims arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England.
- 23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle all disputes or claims that arise out of or in connection with the Agreement or its subject matter.

Special Terms for Discretionary Advice Service

These Special Terms are to be read in conjunction with the General Terms and Conditions for Chargeable Services and the Quotation and govern the provision of discretionary advice services by Natural England.

RECITALS

- (A) Natural England is a statutory obligation under the Wildlife & Countryside Act 1981, in respect of operations likely to damage flora and fauna at Sites of Special Scientific Interest. Natural England has other statutory duties and functions, however, these are not considered relevant to this service.
- (B) Notwithstanding its statutory obligation, Natural England is able to provide discretionary advice, as described in more detail at <https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities> to relevant organisations in respect of the Proposal.
- (C) The Customer is either considering or intends to undertake operations which would require formal notification to Natural England under section 28H of the Wildlife and Countryside Act 1981 and wishes to obtain Natural England's advice in respect of the same.

24. DEFINITIONS AND INTERPRETATION

- 24.1 In addition to clause 1 of the General Terms, the following terms and expressions set out below shall have the meanings ascribed therein:

Operation	a proposed operation on or near a Site of Special Scientific Interest and to which Natural England has agreed to provide the Services in respect of.
DAS Services	the discretionary advisory services described in detail at https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities .
Notification	Formal notification by the Customer of its intention to conduct an Operation pursuant to section 28H of the Wildlife and Countryside Act

	1981.
Service Levels	those service levels against which Natural England will seek to measure its performance in providing the Services as set out at https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities

25. ADVISORY SERVICES

25.1 In requesting the DAS Services the Customer agrees and acknowledges that:

- 25.1.1 any advice given by Natural England officers pursuant to the Agreement does not constitute or bind Natural England in respect of any future representations it may make in the course of its statutory duty;
- 25.1.2 any views or opinions expressed are given without prejudice to the formal consideration of any Notification relating to the Operation and its formal representations in respect of such Notification;
- 25.1.3 the final decision on any representations in response to a Notification will be made by a senior officer of Natural England and will be based on all of the information available at the time;
- 25.1.4 Natural England and its officers cannot give any guarantees about the final representations that it will make on any Notification;
- 25.1.5 any discretionary application advice may be overtaken by changes in available information as well as changes in international, national, regional or local law, policy and guidance.
- 25.1.6 Natural England shall be entitled to publish, present or use the methods and results of the Services in any way that it deems appropriate.