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Delivered by email to: [jamie.stanley@lih.co.uk](mailto:jamie.stanley@lih.co.uk)

Our ref: 16371 - FQ001 - Q1  
October 24, 2023

Dear Jamie,

## **Little Barford, Bedford – Ecology Proposal**

Further to your email of 6th October 2023, many thanks for the invitation to quote for ecological inputs for the Little Barford site in Bedford Borough. I set out below our understanding of the brief, scope and fees.

I can confirm we have no conflicts in Bedford Borough and that we can provide P.I. cover to the value of £5m. Please note we have responded separately via email regarding the appointment terms and conditions, as we have appointment wording previously agreed for other schemes with LIH.

### **Understanding the Brief**

I have set out below the following required tender information for ecology as set out in Section 10 of the 'Little Barford – Project Brief and Request for Fee Proposal (Ecology)' document:

- Proposed approach;
- Key assumptions (see Assumptions and Exclusions);
- Proposed project team and competence;
- Relevant experience and case studies; and
- Hourly rates.

In line with Section 9 of the aforementioned document, the proposed scope and associated fees cover:

- Ecological surveys, namely a UK Habitats survey at this stage;
- Input into emerging design;
- Input into DAS and Design Code;
- Attendance at stakeholder workshops relevant to topic area;
- Attendance at design/project team meetings;
- Input to scoping opinion;

- Provision of an EIA Chapter on ecology;
- BNG calculations and report; and
- Post-submission co-ordination with statutory consultees and addressing any comments.

Additional fee items that we feel are required and are set out in this fee proposal are as follows:

- Data search (from two records centres given the site's location in Bedfordshire but close proximity to Cambridgeshire); and
- Habitats Regulations Assessment (HRA) screening (to take account of saved Policy 44 of the Bedford Borough Local plan).

Policy HOU19 Little Barford New Settlement of the Bedford Local Plan 2040: Plan for Submission has been reviewed when preparing this proposal, alongside other relevant draft policies, and saved policies from the adopted Bedford Borough local plan.

The fees provided at this stage relate to the entire landholding, namely the main site being considered for development and the 'contingency land'.

#### Proposed Approach

Given the proposed project timescales (Planning Programme – Appendix 4) we propose to complete a data search and site visit as soon as possible following appointment. This is intended to enable an understanding of ecological constraints and opportunities, map the habitats present, provide early design steer on Biodiversity Net Gain (BNG) and assist with the scoping of further surveys for protected/notable species which are likely to be required in 2024. Once the scope has been defined, we will seek to agree the survey scope with the LPA ecologist as soon as possible (either through the EIA scoping process or if more time efficient and acceptable, through direct consultation).

Undertaking the site visit once appointed will allow us to more effectively feed into the EIA baseline and EIA scoping stages, alongside the masterplan, design code and IDP. It should be noted that given the proposed report writing and submission timescales, it is likely that whilst most protected species surveys should be concluded at the time of writing reports, surveys for some protected/notable species (which will likely be required to inform the ES chapter) will be ongoing. These include wintering bird surveys and bat activity surveys. As such, should reports need to be finalised ahead of surveys concluding, the possibility of submitting an ecological addendum report and accompanying addendum to the ES chapter for ecology will be discussed with the client/LPA ecologist. Any reporting prepared in advance of surveys concluding will set out an early understanding of potential impacts and application of the mitigation hierarchy.

On BNG, given that the proposal is for outline permission and the development will be delivered through a series of reserved matters applications, to inform the outline application a BNG plan will be produced. The BNG plan will set out how an overall net gain can be achieved across the masterplan area (using the most up to date DEFRA metric, currently 4.0), to guide subsequent reserved matters applications in what they need to deliver to achieve the required net gain. As set out in 'Policy DM7 Environmental Net Gain' of the Bedford Local Plan 2040, there may also be a requirement to demonstrate 'how net biodiversity and net environmental gain will be achieved through the production of a supporting statement that

considers the contribution the proposal could make to the borough's natural capital'. The need for this, and what the content of the statement needs to include, would be scoped with the LPA.

With regard to the proximity of the site to the River Great Ouse, saved Policy 44 of the Bedford Borough Local plan sets out that development along/adjoining the river should not impact Natura 2000 sites downstream of Bedford, namely Portholme Special Area of Conservation (SAC) and The Ouse Washes SAC/Special Protection Area/Ramsar. As such, a HRA screening assessment will be required to accompany the planning application and address these matters. In addition, the proximity of the site to the River Great Ouse and the on-site streams mean a MoRPh survey may be required to inform the BNG assessment; the need for this survey can be discussed as adjustments to the site boundary may mean it is not required.

It is noted that the Blackcat to Caxton Gibbet Road Improvement, which runs through the site (if including the contingency land in the assessment), has been through the relevant legal process and construction is due to start imminently. As such, a review of all ecology information compiled for the road scheme and within influence of the Little Barford site will be undertaken for context, to take account of any relevant cumulative effects (in EIA terms) if required, and to ensure a joined up approach with regard to the proposals at the Little Barford site and green and blue infrastructure proposals for the road scheme.

Similarly, EWR Phase 3 bisects the site north to south but is in much earlier stages of gaining consent. As such, if proposals for EWR Phase 3 begin to progress, consultation with the ecologists and landscape team will be undertaken as necessary with the client's permission.

#### Proposed Project Team Structure and Competence

Tyler Grange is a well-respected, medium-sized technical planning consultancy specialising in ecology, arboriculture and landscape planning. In the 12 years since our conception, our reputation has grown, as well as our size. We now operate across the country from our six offices. The success of the business a result of our dedication to achieving our clients' objectives, which has led to repeat business and referral. As a certified B Corporation, we have made a formal commitment to transforming the way we work, making sure that every decision made within the business has a positive impact on people, communities and the world.

We pride ourselves not just on the quality of our work but on our culture and our personality, working with multi-disciplinary design teams to find pragmatic, practicable and positive solutions to project challenges, whilst being good fun to work with. We understand that real positives can come from new development, and that large-scale projects provide huge opportunities for landscape and ecological enhancement as well as providing positive changes to the way people live their lives. We like to work proactively with local authorities and other relevant stakeholders to ensure that everyone understands and is happy with the outputs and scope.

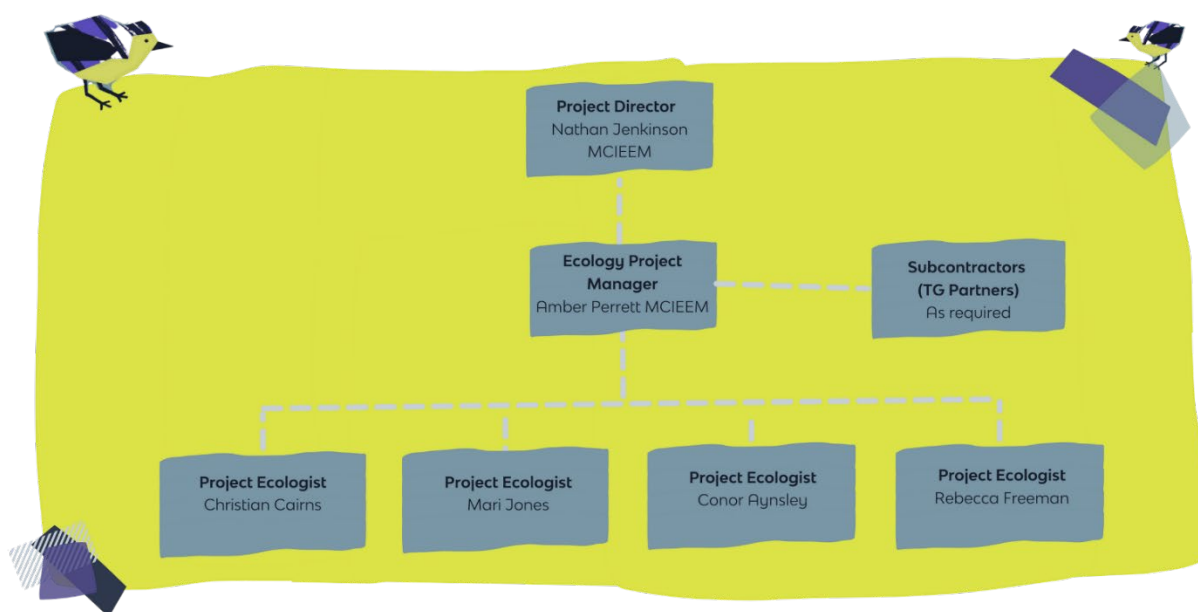
Tyler Grange has the required capacity to deliver the project, including any unforeseen peaks in workload, by having over 65 directly employed consultants across the UK who can assist with project delivery. In addition, we have access to over 100 trusted subcontractors with whom we regularly work when larger jobs dictate that we need to bring in additional/specialist assistance. This allows us to be flexible and reactive with changing/complex project requirements.

We have been operating using this model for three years to allow us to manage peaks in workload and provide more specialist project inputs that we do not have in-house. All TG Partners are initially vetted through the submission of all documentation (insurance, qualifications, competency statements, H&S documentation, references) for review by our team. Once this aspect is completed, each new TG Partner is interviewed by a Director or Associate to ensure that they are likely to align with our company values as well as demonstrate the technical skills required to deliver the tasks they will be asked to do.

When completing work for TG, all Partners are asked to use the same data collection methods as the internal team, including the use of our digital data collection programme Coreo. All data collected by Partners is also subjected to an internal quality assurance process before it is used to inform our technical outputs.

The proposed 'core' project team would be overseen by Project Director (PD) Nathan Jenkinson, who has over 9 years' experience in the environmental sector. The Project Manager (PM) would be Amber Perrett who has 9 years' experience in the ecology sector, including managing ecology matters on outline applications for large/complex projects. They would be supported by project ecologists Christian Cairns, Mari Jones, Conor Aynsley and Rebecca Freeman, as well as TG Partners to help deliver the survey effort required.

The proposed team structure is set out in the organogram below:



## Relevant Experience and Case Studies

Dorset Innovation Park (client: Purbeck District Council)

Tyler Grange ecologists worked as part of a multi-disciplinary team on a Local Development Order (LDO) to create a set of guiding principles designed to bring forward long term employment opportunities at a 40ha decommissioned nuclear facility. Tyler Grange obtained baseline data and, owing to the significant ecological constraints, we recommended a structured programme of engagement (meetings and telcons) with stakeholders at key stages in the LDO process, which was agreed with the client and project manager. Tyler Grange subsequently consulted the Dorset Natural Environment Team and Natural England (involving 5 meetings and numerous telcons through the duration of the

project). The site is ecologically sensitive, being adjacent to Dorset Heathlands SPA and SAC, and supports important acid grassland communities, together with an important assemblage of reptiles and bats. Tyler Grange devised a detailed ecological mitigation and enhancement strategy that describes how ecological issues would be accommodated within the green infrastructure over the 25 year duration of the LDO, with off-site compensation devised to address residual impacts that could not be mitigated.

Graham Stephens MRTPI, Director at Stride Treglown Limited, project manager for the client said "I was, and remain, very impressed with the methodical and creative way in which Tyler Grange helped to assess the scale and nature of the opportunity, how their engagement with Natural England sought to address biodiversity gain from the outset, and how proactive they were in shaping and drafting the necessary environmental and landscape safeguards through a number of site specific strategies. Their input added a robustness to the landscape and ecological approach. I would have no hesitation in recommending Tyler Grange to be part of any major multi-disciplinary project team."

Nick Squirrell, Lead Adviser for Natural England who was involved on this project said: "Tyler Grange has shown a willingness to work with local experts to share local knowledge and experience to achieve the best outcomes for biodiversity. The consultancy has a sound background in good practice which it brings to the table and is open to share and modify to suit local conditions. The consultancy is also committed to ensuring that measures are implemented and secured through appropriate follow up monitoring, which feeds back into the organisational learning."

Long Marston, Stratford upon Avon (client: St Modwen Developments)

Tyler Grange have been acting on behalf of St Modwen since 2010 with respect to ecology issues and the ongoing re-development of the former MOD site at Long Marston, Warwickshire. The site is approximately 110 ha in size and surveys confirmed it supports a county important population of water vole, bat roosts (notably lesser horseshoe bat, Bechstein's and a maternity roost of brown long-eared and Natterer's), great crested newts, reptiles, badgers and some rare invertebrates. It also supports some valuable grassland, woodland, 'brownfield' and wetland habitats. Tyler Grange have been involved in every stage in the site's development, as follows:

- Input into site promotion documents to support the site's allocation for development;
- Detailed ecological impact assessments and chapters within several EIAs to inform planning applications;
- Ecological design to ensure important features are retained within green infrastructure, and opportunities to create new habitats to contribute to local biodiversity targets were taken (including creating a 10ha wetland where flood attenuation was required, and re-meandering a stream that was in culvert), to enable development was in conformity with planning policy. Included use of Warwickshire's Biodiversity Impact Calculator to confirm impacts were more than mitigated;
- Agreement of strategies with the county ecologist, Environment Agency and Warwickshire Wildlife Trust (WWT) that ensured there were no objections on ecology grounds; and
- Post planning input into reserved matters applications, discharge of planning conditions and S106 obligations, and protected species licensing (three lesser horseshoe roosts, Bechstein's, Natterer's, badger).

Annie English of WWT was invited back to the site post construction and wrote this in their members' magazine 'Wild Warwickshire' (Winter 2017) "WWT hopes that other developments take inspiration from this site and maximise the benefits of green infrastructure for people and wildlife."

Confidential Site (client: Enfield Borough Council)

Tyler Grange are working on behalf on Enfield Council providing ecological and landscape planning services for two large-scale strategic allocation sites. The details are confidential at this stage, but our scope includes providing cross-discipline opportunities and constraints plans and advice, input into the development of the framework masterplans for each site, consultation with key stakeholders and the development of the principles that will feed into the SPDs. The sites are subject to some key constraints relating to the presence of green belt as well as Local Wildlife Sites. Tyler Grange are providing pragmatic advice to ensure that important environmental features are protected, but that the developable area still provides a viable scheme to help deliver target levels of housing.

Hourly Rates

Hourly rates by grade are set out below (All prices are ex VAT).

- Director: £145
- Associate: £130
- Senior: £95
- Consultant: £75
- Graduate: £60
- Assistant: £60

Fees for the above brief are set out in the table below and are inclusive of expenses (unless stated). These are exclusive of VAT and would be subject to our Standard Terms and Conditions (attached).

<b>Task</b>	<b>Description of Work</b>	<b>Fees</b>
Data Search	Purchase of records for protected sites, habitats and species within 2km of the site from Beds and Cambs LERCs. Includes a review of the resulting data. Should the data search cost exceed that listed, we will confirm in advance of ordering.	£2,040.00
Extended Phase 1/UK Habitats Survey	Survey by 2 people for 5 days to assess the extent/condition of habitats using UKHab Classification System. The condition assessments will be used in the BNG assessment. The habitats will also be assessed for their potential to support protected species.	£10,890.00
Biodiversity Net Gain Assessment (BNG)	Completion of the DEFRA 4.0 metric. Covers one initial run of the metric, and one further iteration following design tweaks (if required). The results will be provided in a short technical note, or incorporated into wider reporting for the site.	£8,900.00
Input into Emerging Design	Consultation (verbal / email) with the project team to provide feedback on survey results, discussions on planning approach and emerging design advice.	£2,490.00
Input into DAS and Design Code	Provision of inputs into the DAS and design code.	£2,490.00
Attendance at Stakeholder Workshops	Budget for attendance at 3 face-to-face workshops with relevant stakeholders (Natural England, council officers and public stakeholders).	£3,990.00
Attendance at DTM's/Project Team Meetings	Budget for attendance at 5 face-to-face meetings, covering a combination of DTMs and project team meetings.	£6,780.00
HRA Screening	A Shadow Appropriate Assessment (Screening Stage). This will set out the qualifying features and conservation objectives of the relevant European sites and assess likely significant effects resulting from the scheme, either alone, or in- combination.	£4,990.00
EclA Scoping Inputs	Ecological inputs to EclA scoping report. Includes a review of the site baseline, likely significant effects, and mitigation options. The document will propose the ecological features to be considered within the assessment.	£4,440.00
ES Chapter	Ecology ES chapter to be produced following CIEEMs EclA Guidance (2018). The chapter will set out the methodology, avoidance and scheme design measures, construction phase and operational impacts, cumulative effects and mitigation measures.	£15,120.00
Post-submission Co-ordination	Budget for post-submission co-ordination with statutory consultees and addressing any comments.	£2,490.00
<b>Total</b>		<b>£64,620.00</b>

### **Assumptions, Exclusions and Timescales for completion**

It is assumed that full site access, as agreed ahead of the survey, will be provided to allow us to conduct our site visits. I would also be grateful if details of any known site hazards (including presence of hazardous materials such as asbestos within buildings) are provided in order to inform the completion of a risk assessment prior to any site visit.

It should be noted that expenses are included in the fixed fees.

The cost of the following is not included within this fee proposal and will be subject to additional fees:

- Work outside of the scope outlined above;
- Any detailed Phase 2 survey work that may be required – ballpark costs for these surveys are provided in the covering email as requested, however fixed fees cannot be confirmed until the initial site visit has been undertaken and surveys scoped with the LPA ecologist;
- Additional consultation (other than that specified) which may be required;
- Any additional detailed mitigation strategies, including management plans;
- Additional drafts of the reports (one draft and one final version only are included), should there be for example design changes, or alteration to the application boundary after submission of our reports; and
- Provision of hard copy of reports. Costs can be supplied if necessary.

The contents of the reports will be valid at the time of writing. Tyler Grange shall not be liable for any use of the reports other than for the purposes for which they are produced. Owing to the dynamic nature of ecological and landscape resources, if more than twelve months have elapsed since the date of any of the reports, further advice must be taken before you rely on their content. Notwithstanding any provision of the Tyler Grange Group Limited Terms & Conditions, Tyler Grange Group Limited shall not be liable for any losses (howsoever incurred) arising as a result of reliance by the client or any third party on the reports more than twelve months after the date of the reports.

Please note that if there is a requirement to provide a letter of reliance relating to this fee this will be charged at £500 (plus VAT) in accordance with our terms and conditions set out below (10.2).

### **Quote Validity and Instruction**

The fee quote remains valid for a period of 30 days and is subject to our terms and conditions.

Work will begin once a written instruction (an email replying to this will suffice) with the confirmation of project details below.

- Is the account and address on this quote the entity that is going to be billed?  
*If no, please provide those details and confirmation you are authorised to instruct the work on their behalf.*
- Are you going to be issuing a contract or an appointment letter?  
*If you are going to be issuing a contract/ appointment letter and/or a purchase order for this work, we will require these prior to commencing work.*
- Is a Purchase Order required for this service?  
*If so, please provide a PO reference in the instruction.*

Please do not hesitate to contact me if you wish to discuss any aspect of the above.

Yours sincerely,

Nathan Jenkinson

*Client Director*

**Tyler Grange**



## Terms and Conditions for Supply of Services

### THE BUYER'S ATTENTION IS IN PARTICULAR, DRAWN TO THE PROVISIONS OF CONDITION 9

#### 1. INTERPRETATION

1.1 In these Terms the following words have the following meanings:

**The Client:** the person(s) who purchase(s) Services from the Company;

**The Company:** Tyler Grange Group Limited, registered in England and Wales under company number 11435090 whose registered office is at The Marsden Estate, Rendcomb, Cirencester, United Kingdom, GL7 7EX;

**Contract:** any agreement or written instruction against a quote issued by the Company between the Company and the Client for the performance of the Services incorporating these Terms and Conditions;

**Contract Price:** all fees paid by the Client to the Company for Services under the Contract.

**Document:** includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or other record of any information in any form;

**Input Material:** any Documents or other materials and any data or other information provided by the Client relating to the Services;

**Output Material:** any Documents or other materials and any data or other information provided by the Company relating to the Services;

**Standard Charges:** the charges shown in the Contract regarding the price for the provision of the Services;

**The Services:** services agreed to be supplied to the Client by the Company;

**Terms:** these terms and Conditions and "Condition" shall be construed accordingly.

1.2 In these Terms references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes any subordinate legislation for the time being in force made under it.

1.3 In these Terms references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits.

1.4 In these Terms headings do not affect their construction.

#### 2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Terms to the exclusion of all other terms and Conditions (including any terms or Conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or Conditions endorsed upon, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document will form part of the Contract because such document is referred to in the Contract.

2.3 These Terms apply to all the Company's provision of Services and any variation to these Terms and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each request for Services by the Client to the Company shall be deemed to be an offer by the Client to purchase the Services subject to these Terms.

2.5 No order for Services placed by the Client shall be deemed to be accepted by the Company until the earlier of a written acknowledgement of order being issued by the Company or the Company performing the Services.

2.6 The Client must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation for Services is given on the basis that no Contract will come into existence until acceptance by the Company in accordance with Condition 2.5. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

#### 3. DESCRIPTION

3.1 The description of the Services shall be as set out in the Contract.

3.2 All drawings descriptive matter, specifications and advertising issued by the Company and any descriptions contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of the Contract.

#### 4. SUPPLY OF SERVICES

4.1 The Company shall perform the Services in accordance with the Contract. Any changes or additions to the Services or these Terms must be agreed in writing by the Company and the Client in accordance with Condition 2.3.

4.2 The Client shall at its own expense supply the Company with all necessary Documents or other materials and all necessary data or other information relating to the Services within sufficient time to enable the Company to perform the Services in accordance with the Contract. The Client shall be liable for and ensure the accuracy of all Input Material.

4.3 The replies by the Client for requests made to them by the Company for information, assistance or decisions shall be provided in a timely fashion.

4.4 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Company shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to the Client.

4.5 Services will be delivered each month and for the avoidance of doubt, each month's delivery constitutes a separate contract for the delivery of Services.

The Delivery of Output Materials is merely one part of the Services carried out in the month in which it is delivered. The delivery of Output Material is not the essence of the contract. Any dates specified by the Company for the delivery of Output Material are intended to be an estimate and time of delivery of the Output Material shall not be made of the essence by notice. If no dates for the Delivery of Output Material are specified, the delivery shall take place within a reasonable time in all of the circumstances. It is acknowledged by the Client that environmental and other Conditions outside the Company's control could affect the Company's ability to comply with any programme in the Contract. The Company is not responsible for any delays in replies to requests for information or other responses from third parties including statutory organisations.

4.6 Further details about the Services and advice or recommendations about its provision or utilisation which are not given in the Contract may be made available on written request.

4.7 The Company may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.

4.8 Subject to the other provisions of these Terms the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by the Company's negligence), nor will any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 90 days.

4.9 The Client shall provide such access to sites as is necessary to complete the Services including any later visits necessary to complete the Services and shall do all things necessary to make such access effective, save that such access may be subject to such reasonable restrictions as are necessary to protect any property or rights of the Client.

4.10 The quality and completion of the Services shall be recorded and signed off by the Company and shall be conclusive evidence of the same unless the Client can provide conclusive evidence proving the contrary.

4.11 Any liability of the Company for non-performance of the Services shall be limited to performing the Services within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Services.

4.12 The Client shall comply, and shall procure that its agents comply, with the terms and Conditions of any licence issued to it or to the Company under The Wildlife & Countryside Act 1981, National Parks & Access to the Countryside Act 1949, Hedgerows Regulations 1997, Protection of Badgers 1992, The Conservation of Habitats and Species Regulations 2010, Countryside & Rights of Way Act 2000, Wild Mammals (Protection) Act 1996, Natural Environment & Rural Communities Act 2006 or any other legislation relevant to the Services or the Works and shall fully co-operate with the Company to allow the Company also to comply with such terms and Conditions.

#### 5. PRICE

5.1 Subject to any special terms agreed under Condition 2.3, the Client shall pay the Company's Standard Charges and any additional sums which are agreed between the Company and the Client for the provision of the Services or which, in the Company's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client's actions or omissions.

5.2 The Company shall be entitled to vary the Company's Standard Charges from time to time by giving not less than 90 days' written notice to the Client.

5.3 All charges quoted to the Client for the provision of the Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate prevalent at the time.

5.4 Unless otherwise agreed in writing between the parties, the Company will invoice the Client at the end of the month in which Services are performed. As per Condition 4.5, each invoice is a separate contract and is not a request for a payment on account.

5.5 The Company's invoices to the Client shall be paid by the Client within 28 days of the date of the Company's invoice.

5.6 The Client shall make all payments due to the Company without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.

5.7 Where the Client has agreed that parts of the Services shall be sub-contracted by the Company to a third party, the Company may render separate invoices at calendar monthly intervals in respect of those parts of the Services.

5.8 No payment shall be deemed to have been received until the Company has received cleared funds.

5.9 If the Client fails to pay the Company any sum due pursuant to the Contract, the Client shall be liable to pay interest to the Company on such sum for the due date for payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

5.10 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

5.11 Where time charge fees apply the amount due for each person at each payment interval shall be the sum calculated by multiplying the hourly or daily rates applicable to the person concerned by the number of hours or days spent by such person during the interval in question.

5.12 If any additional costs are incurred by the Company because of any variation to the Services by the Client or as a result of any lack of or error in any information concerning the site where the Services take place or access thereto or because of other reasons beyond the control of the Company, the Company shall be entitled to additional payment covering the additional costs.

#### 6. CLIENT'S AGENT

6.1 Where the Client is acting through an agent the agent shall have full authority to act on behalf of the Client in all matters in connection with the Services including the giving or receiving of consents, instructions, information, notices, invoices or otherwise and where applicable is appointed as Client's agent for the purposes of The Construction (Design and Management) Regulations 2007 unless the Client shall otherwise specify by written notice to the Company.

#### 7. RIGHTS IN INPUT MATERIAL AND OUTPUT MATERIAL

7.1 The property and any copyright or other intellectual property rights in:

7.1.1 Any Input Material shall belong to the Client.

7.1.2 Any Output Materials shall always belong to the Company. However, the Company hereby grants the Client an exclusive, non-transferrable (without express written consent of the Company) licence to use the Output Material for the purposes of utilising the Services if the Client is not in default of its payment obligations under this Contract for any Services provided.

7.2 In the event of the Client being in default of payment of any fees due under the Contract, the Company is entitled to revoke all licences previously granted to the Client by the Company under this Contract under Condition 7.1.2 above on giving 7 days' notice. If these licences are revoked, the Client will no longer be entitled to use the Output Materials in any planning process and the Company is entitled to inform the relevant planning authority that the opinions given are withdrawn.

7.3 Any Input Material or other information provided by the Client which is so designated by the Client shall be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client and the Client's agent (where applicable); but the foregoing shall not apply to any Documents or other materials, data or other information where the disclosure is required by law or which are public knowledge at the time when they are provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

## Terms and Conditions for Supply of Services

7.4 The Client warrants that any Input Material and its use by the Company for the purpose of providing the Services will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such alleged infringement.

7.5 Subject to Condition 7.3, the Company warrants that any Output Material and its use by the Client for the purposes of utilising the Services will not infringe the copyright or other rights of any third party and the Company shall be liable to the Client for any reasonably foreseeable and fully mitigated loss, damages, costs, expenses or other claims arising from any such infringement.

7.6 The Company shall not be liable for the use by the Client of any Output Materials for any purpose other than that for which the same was prepared.

### 8. WARRANTIES

8.1 The Consultant warrants that in the provision of the Services it has exercised and will exercise the reasonable skill and care to be expected of a properly qualified and competent member of its profession experienced in carrying out work similar in scope and character to the Services.

### 9. LIMITATION OF LIABILITY

9.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:-

9.1.1 any breach of these Terms;

9.1.2 any use made by the Client of any of the Services or anything arising out of the Services; and

9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Terms excludes or limits the liability of the Company:-

9.3.1 for death or personal injury caused by the Company's negligence; or

9.3.2 under section 2(3) of the Consumer Protection Act 1987; or

9.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

9.3.4 for fraud or fraudulent misrepresentation.

9.4 Subject to Condition 9.2 and Condition 9.3:-

9.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lesser of:-

(i) the Contract price; or

(ii) the direct costs reasonably incurred by the Client in cleaning up the site where the Services took place or any part thereof; or

(iii) the amount (up to £1,000,000) recoverable under any professional indemnity insurance taken out by the Company.

9.4.2 The Company shall not be liable to the Client for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

9.5 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong from, or arising from their late arrival or non-arrival, or any other fault of or omission of the Client or the Client's agent (if applicable).

9.6 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control.

9.7 The liability of the Company for any claim or claims arising out of or in respect of damage to utility services is excluded unless full information of their presence and/or location was made available to the Company prior to commencement of the Services.

9.8 The Company is not responsible under the Contract or otherwise for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism and the liability if any of the Company's under or in connection with the Contract whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with terrorism matters is excluded.

9.9 The Company does not have any responsibility under the Contract to advise on asbestos related matters as set out in the Services the following provisions of this Condition shall apply;

(i) The Company is not responsible for advising on matters which wholly, partly, directly, or indirectly arise out of or result from asbestos (including without limitation the costs of testing for, monitoring, abatement, mitigation, removal, remediation or disposal of any asbestos or product or waste that contains asbestos) and the liability if any of the Company under or in connection with the Contract, whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim which may arise out of or in connection with asbestos matters is excluded.

(ii) The Client shall indemnify the Company against liability for any claim for injury, death, loss or damage wholly, partly, directly or indirectly arising out of or resulting from or associated in any way with such asbestos matters.

9.10 Only in respect of work undertaken outside the United Kingdom (including the Channel Islands and the Isle of Man) and the Republic of Ireland, liability is excluded for any claim caused directly or indirectly in whole or in part by:

(i) any fungus or spore; or

(ii) any substance, vapour or gas produced by or arising out of any fungus or spore; or

(iii) any material or product or building component or building or structure that contains or harbours or nurtures or acts as a medium for any fungus or spore to the extent that it results in or causes or contributes to such claim; or

(iv) the monitoring or abatement or mitigation or removal or remediation or disposal of any fungus or spore.

9.11 If the Client is an individual, no exclusion or limitation of liability in these Terms shall affect any liability for death or personal injury suffered by the Client.

9.12 The Company shall maintain professional indemnity insurance from the commencement of the Services until 6 years after the date of completion of the Services in an amount sufficient to cover the Company's liabilities under these

Terms provided always that such insurance is available at commercially reasonable rates and subject to all exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurance as the insurance is taken out or renewed as the case may be. The Company shall inform the Client if such professional indemnity insurances cease to be available on the terms required by this Condition at commercially reasonable rates in order that the Company and the Client can discuss means of best protecting their respective positions in the absence of such professional indemnity insurance.

9.13 The Company shall maintain public liability insurance from the commencement of the Services until the completion of the Services in a sum sufficient to cover their liabilities hereunder provided always that such insurance is available at commercially reasonable rates.

9.14 As and when reasonably requested to do so by the Client the Company shall produce for inspection broker's certificates to show that the insurance cover required under Condition 9.12 and 9.13 is maintained.

9.15 No action or proceedings under or in respect of these terms, whether in contract or in tort, in negligence or for breach of statutory duty or otherwise, shall be commenced against the Company after the expiry of 8 years from the date of completion of the Services or such earlier date as may be prescribed by law.

### 10. ASSIGNMENT

10.1 The Client shall not be entitled to assign the Contract or any part of it.

10.2 The Company will consider any reasonable request to provide a Letter of Reliance in relation to the report produced after the Contract but shall only provide a Letter of Reliance in the form approved by the Company upon receipt in cleared funds from the beneficiary's payment of the sum of £500 + VAT.

10.3 The Company may assign the benefit of the Contract or any part of it to any person, firm or company.

### 11. FORCE MAJEURE

11.1 The Company reserves the right to defer the date of conducting the Services or to cancel the Contract (without liability to the Client) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, inclement or inappropriate weather Conditions, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting consultants or sub-contractors provided that, if the event in question continues for a continuous period in excess of 90 days, the Client shall be entitled to give notice in writing to the Company to terminate the Contract.

### 12. DURATION AND TERMINATION

12.1 The effective date of the appointment of the Company is the date when the Company first commenced performance of the Services.

12.2 The Client shall be entitled to terminate the Contract at any time by giving not less than 90 days written notice to the Company.

12.3 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Terms and (if capable of remedy) the Client fails to remedy the breach within 7 days and/or the Company fails to remedy the breach within 28 days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986, and the Insolvency Act 2000).

12.4 Notwithstanding any other provision, if circumstances arise for which the Company is not responsible and which the Company consider make it irresponsible or unsafe to perform all or any part of the Services. The Company shall be entitled to terminate the Contract forthwith written notice in respect of all or part of the Services.

### 13. GENERAL

13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Client will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

13.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### 14. COMMUNICATIONS

14.1 Any notice or other communication required under these terms and conditions shall be in writing and service shall be by one of the following methods:

14.1.1 personally, when service shall be effective on delivery;

14.1.2 by first class post, when service shall be effective two days after posting; or

14.1.3 by recorded delivery, when service shall be effective on delivery.

14.2 These must be delivered as follows:

14.2.1 In case of communications to the Company to its registered office or such changed address as shall be notified to the Client by the Company; or

14.2.2 In the case of the communications to the Client to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Client set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Client.