

Annex II

The Cairngorms National Park Authority (Park Authority) Terms and Conditions of contract for the purchase of services

These Conditions may only be varied with the written agreement of the Cairngorms National Park Authority (the Purchaser). No terms or conditions put forward at any time by the Creative (the Supplier) shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. Definitions

In these conditions:

‘Purchaser’ means the Cairngorms National Park Authority (Park Authority).

‘Supplier’ means the individual, partnership, company or organisation providing the Services.

‘Services’ means the creative services described in a Call-Off Order as specified in the Commissioning Brief, and any other documents (or parts thereof) specified in the contract award letter (and / or as otherwise agreed in writing between the parties from time to time) and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder including:

- a) Landscape drawings or diagrams;
- b) Landscape paintings;
- c) Digital illustrations;
- d) Landscape photographs;
- e) Community engagement activities, including workshops, guided walks, field sketching and photography activities;
- f) Films and video content;
- g) Physical or digital models or mapmaking;
- h) Storytelling, interpretation and oral histories.



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'Call-Off Order' means the written commission issued by the Park Authority setting out the Services, Deliverables, fee and timescale.

'Deliverables' means the work, materials or outputs produced under a Call-Off Order.

'Commissioning Brief' means the document setting out the Purchaser's requirements for the Contract, and which document was published / issued by the Purchaser.

'Contract' means the contract between the Purchaser and the Supplier consisting of the Commissioning Brief, these conditions and other documents (or parts thereof) specified in the contract award letter;

'Controller', 'data controller', 'data processor', 'data protection impact assessment', 'data subjects', 'information commissioner', 'personal data', 'processor' and 'processing' (including any derivatives thereof) shall have the meanings given to them in the Data Protection Legislation;

'Data Protection Legislation' means any law applicable relating to the processing, privacy and use of personal data, as applicable to either party or the Services, including: (i) the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (PECR); (ii) the General Data Protection Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time) ; (iii) any laws which replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of these Conditions); (iv) any other applicable law relating to the processing, privacy and / or use of personal data; (v) any laws which implement, replace, extend, re-enact, consolidate or amend any such laws; and (vi) to the extent they are legally binding: any guidance, guidelines, codes of practice, codes of conduct or approved certification mechanisms issued by the Information Commissioner, or other



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regulatory or supervisory authority responsible for administering Data Protection Legislation;

'Premises' means the location where the Services are to be performed, as specified in the Commissioning Brief;

'Purchase order' means the purchase order issued in relation to the Services;

2. Change to contract requirements

- 2.1 The Purchaser may, at its sole discretion, order any variation to the Services or any part of the Services, that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 2.2 Save as otherwise provided herein, no variation of the Services as provided for in clause 2.1 hereof shall be valid unless confirmed by the Purchaser. All such orders of variation shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within two working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said two working day period.
- 2.3 Where any such variation of the Services made in accordance with clause 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the Services) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in his sole opinion, appropriate and reasonable in the circumstances.



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3. Time of performance

3.1 The Supplier shall begin performing the Services on the date stated in the Commissioning Brief and shall complete them by the date stated in the Commissioning Brief or continue to perform them for the period stated in the Commissioning Brief (whichever is applicable). Time is of the essence of the Contract. The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

4. Payment

- 4.1 Unless otherwise stated in the Contract and / or agreed in writing between the parties, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 4.2 Where the Purchaser disputes in good faith on reasonable grounds any sum invoiced by the Supplier, the Purchaser may withhold payment in respect of the amount under dispute, pending resolution of the dispute and / or completion of work to the satisfaction of the Purchaser.
- 4.3 Value added tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

5. Free-issue materials

5.1 Where the Purchaser for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Purchaser. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any of his servants, agents or subcontractors shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Purchaser, the Supplier shall deliver up such materials whether processed or not to the Purchaser on demand.



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6. Copyright

- 6.1 Copyright in the work shall remain with the Creative but the Creative is required to grant the Park Authority a non-exclusive, royalty-free, perpetual licence to use, reproduce, display, and distribute the work for the Park Authority's statutory and promotional purposes. All Cairngorms 2030 projects are subject to an Open Licence Agreement and all materials created or digitised with this funding is subject to this requirement.
- 6.2 An agreed output (format to be determined) will be delivered by the agreed date and a copy made available to the Park Authority for future use as per National Lottery requirements. If you have any questions about these, please talk to your project lead.
- 6.3 Explicit written permissions for any filming, interviews, photography and recording undertaken should be in place as part of your contract with individuals, landowners and other relevant parties. The purpose and use of this material should be made clear in your permission documentation, such as an email. This documentation must be kept and submitted with your agreed outputs.
- 6.4 The Park Authority and The National Lottery Heritage Fund should be acknowledged in all outputs and other format media (e.g. blogs) covering the project using standard logos agreed with the Park Authority in advance of use.
- 6.5 The supplier agrees to complete a short interview to assist with the delivery of the Cairngorms 2030 monitoring and evaluation plan. A set of questions will be provided in advance towards the end of the project output phase.

7. Indemnity and insurance

- 7.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier (which for the avoidance of doubt, includes any subcontractors of the Supplier).



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- 7.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in condition 7.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Purchaser) the indemnity contained in condition 7.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Purchaser.
- 7.3 The Supplier shall have in force during the Contract:
- i) Public and professional indemnity insurance (unless explicitly stated in the Commissioning Brief) for a sum of not less than £5 million, unless otherwise agreed by the Park Authority in writing.

8. Racial discrimination

- 8.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all subcontractors employed in the execution of the Contract.

9. Termination

- 9.1 Either party may terminate this Contract by giving 14 days' written notice to the other party.
- 9.2 Either party may terminate this Contract immediately by written notice if the other party:
- a) commits a material breach of this Contract and fails to remedy that breach within 14 days of being requested in writing to do so; or
 - b) becomes insolvent or ceases to carry on business.
- 9.3 On termination, the Supplier shall promptly deliver to the Purchaser all completed and partially completed Deliverables.
- 9.4 The Purchaser shall pay the Supplier for Services properly performed and Deliverables completed up to the date of termination.
- 9.5 Termination shall not affect any rights or obligations accrued before the date of termination. Any provisions relating to intellectual property, confidentiality and data protection shall continue to apply after termination.



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10. Data protection

- 10.1 The Supplier shall comply with all applicable data protection legislation, including the UK General Data Protection Regulation, the Data Protection Act 2018 and any legislation replacing or amending them.
- 10.2 The Supplier shall only process personal data to the extent necessary for the performance of the Contract and shall implement appropriate technical and organisational measures to protect such data against unauthorised or unlawful processing and against accidental loss, destruction or damage.
- 10.3 Where the Services involve photography, filming, interviews, workshops, storytelling activities or other community engagement activities involving identifiable individuals, the Supplier shall ensure that personal data is collected and used lawfully and that any notices, permissions or consents required by law are obtained.
- 10.4 The Supplier shall promptly notify the Authority of any actual or suspected personal data breach relating to the Contract and shall provide such assistance as the Authority may reasonably require.
- 10.5 On completion or termination of the Contract, the Supplier shall securely delete or return any personal data obtained from the Authority unless retention is required by law.
- 10.6 The Supplier acknowledges that the Authority is subject to the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. The Supplier shall provide such assistance and information as the Authority may reasonably require complying with its statutory obligations under such legislation.

11. Arbitration

- 11.1 All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Purchaser is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be



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deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010.

12. Governing law

12.1 These Conditions and the Contract shall be governed by and construed in accordance with Scots law and the parties hereby irrevocably submit to the exclusive jurisdiction of the Scottish courts.



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