

in partnership with



Provision of Public Art Commissions in Faughan Valley Woodlands, Glenshane Road, BT47 3SN.

**ARTIST AGREEMENT**

THIS DOCUMENT IS FOR INFORMATION ONLY UNTIL APPOINTMENT. IT DOES NOT REQUIRE COMPLETION/SUBMISSION.

Artist Agreement

This Agreement is made between:

**The Artist:**

**\*\*\*Name\*\*\***

Of \*\*\*Address

 (‘the Artist’)

and

**The Commissioner:**

**WOODLAND TRUST** (Registered Company Number 1982873), a Charity registered in England and Wales (No. 294344) and in Scotland (No. SC038885) of:

Kempton Way

Grantham

Lincolnshire

NG31 6LL

(‘the Commissioner’)

**1. DESCRIPTION**

The Artist agrees to work with the Commissioner on the development and realisation of the Work (‘the Work’) as outlined in the Artist Brief in (Document 2 of 8 of tender package – SCOPE (Works & Site Information). The Commissioner’s representative for the purpose of this project is \*\*\* (name), \*\*\* (WT position title).

The Work is defined in Document 2 of 8 of tender package – SCOPE (Works & Site Information).

**2. FEES**

2.1 The Commissioner agrees to pay the Artist a fee of £\*\*\* (+ VAT if applicable) for the Work (‘the Fee’).

The Fee is payable pursuant to the terms of this Agreement and no further costs shall be incurred without the prior written agreement of the Commissioner.

2.2 The Fee will be paid in \*\*\* (\*\*) instalments in accordance with the following Payment Schedule:

2.2.1 an amount of £\*\*\* (+ VAT if applicable) upon signing of this Agreement by all parties and provided clause 2.3 has been undertaken to the satisfaction of the Commissioner (whichever occurs later);

2.2.2 an amount of £\*\*\* (+ VAT if applicable) upon satisfactory completion and

 delivery of the Work.

The Artist will invoice the Commissioner in accordance with the above Payment Schedule

and the Commissioner agrees to pay the Artist within 30 days of receipt of each Invoice.

Invoices should be sent to the attention of:

**Accounts Department (Ledgers)**

The Woodland Trust

Kempton Way

Grantham

Lincolnshire

NG31 6LL

2.3 Prior to payment of the amount in 2.2.1 of the Payment Schedule the Artist will discuss and agree with the Commissioner’s steering group the following:

• Detailed designs and information regarding the proposed Work

• Detailed costings for the Work

• Installation details

• A detailed timetable and schedule for the Work

• Procedures to ensure the Work satisfies all health and safety requirements

• A written maintenance programme for the Work (if applicable).

**3. TIMESCALE**

3.1 The Artist agrees to undertake the Work in accordance with the following timetable:

• Design development: TIMINGS TBC

• Presentation of final proposals with drawings and costings: TIMINGS TBC

• Development and fabrication of Work: TIMINGS TBC

• Delivery to site: TIMINGS TBC

3.2 Any alteration to the timescale must be agreed in writing and signed by both Parties.

**4. ACCEPTANCE**

It is understood that the Artist will use all their aesthetic skills and judgement in producing the Work. The Commissioner will not be obligated to approve and accept the Work if it can be demonstrated to be substantially different from the approved specification, proposal and design.

**5. DAMAGE/MAINTENANCE**

5.1 The Artist will advise the Commissioner in writing of all reasonable maintenance requirements during the intended existence of the Work and the Commissioner will be responsible for such maintenance.

5.2 If the Work is damaged and if, after consultation with the Artist, the Commissioner determines within its discretion that restoration of the Work is feasible at reasonable costs, the Commissioner will offer the Artist an option to conduct or supervise the restoration works upon terms and conditions to be mutually agreed between the Parties. In the event that the Work is damaged beyond feasible restoration, then the Commissioner will be entitled to remove the Work from the site and notify the Artist in writing.

5.3 Any dispute between the Parties in relation to the feasibility of restoration will be dealt with pursuant to the provisions of Clause 12 of this Agreement.

**6. EMPLOYMENT**

This Agreement shall not be construed as creating a relationship of principal and agent, partnership or joint venture of any kind between the Parties and neither Party shall have the authority or power to bind the other Party or to contract in the name of or create a liability against the other Party in any way or for any purpose.

The Artist acknowledges that they undertake the Work as a sub-contractor and are responsible for all taxation, national insurance, all relevant business insurances and any other associated liabilities arising in relation to the Fee or other payments made pursuant to this Agreement.

**7. OWNERSHIP**

The Commissioner and its successors will own all proprietary rights in the Work.

**8. COPYRIGHT AND MORAL RIGHTS**

8.1 The copyright for the Work is retained by the Artist.

8.2 The Artist warrants that the Work will be original to the project and will not be reproduced elsewhere in any format whatsoever.

8.3 The Artist agrees that they will not make or authorise any copies of the Work without the prior written consent of the Commissioner.

8.4 The Commissioner will be entitled to record the Work and to include or authorise the inclusion of this record in any publication, film, internet or television broadcast, without payment or any other liability to the Artist. Wherever possible, the Commissioner will acknowledge the Artist.

8.5 The Artist will be entitled to make a record of the Work and to use such records in order to promote their business. The Artist will acknowledge the Commissioner wherever possible.

**9. TERMINATION**

9.1 Either Party may terminate this Agreement by giving one (1) month’s written notice to the other Party whereupon the Artist will be entitled to receive or retain payment for that part of the Work completed up to the date of termination calculated on the basis of time, fees and materials expended on the project up to the date of termination. Any amount paid in excess of the amount calculated shall be refunded immediately to the Commissioner.

9.2 Where either Party is in default of this Agreement the other Party may give the defaulting Party written notice requiring the default to be remedied within fourteen (14) days.

9.3 Without prejudice to any other right or remedy of the Commissioner, the Commissioner shall be entitled to terminate this Agreement with immediate effect in the event that the Artist:

* + 1. fails to complete any part of the Work by the due date; or
		2. fails to carry out any reasonable instruction of the Commissioner; or
		3. fails to complete the Work to the required standard and quality; or
		4. fails to remedy a default to the satisfaction of the Commissioner pursuant to the terms and conditions of this Agreement within fourteen (14) days of receipt of a notice in accordance with Clause 9.2 hereof.

9.4 Where this Agreement is terminated as a result of the Artist illness or death of the Artist, the Artist or their Executors will be entitled to payment calculated on the basis of that part of the Work completed up to the date of termination not exceeding the Fee

**10. AMENDEMENT**

No amendment of the terms of this Agreement shall be valid or binding unless made by prior written agreement between the Parties and signed by their duly authorised representatives.

**11, DISPUTE RESOLUTION**

* 1. The parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement (or its construction, validity or termination) (“Dispute”). Any Dispute shall be referred first, by notice in writing (“Dispute Notice”), to the other party whereupon both parties shall meet within 20 days of such notice and endeavour to resolve the Dispute between them. The joint written decision shall be binding upon the parties.
	2. If the Dispute is not resolved in accordance with clause 11.1, the parties shall seek to resolve the Dispute amicably by using an alternative dispute resolution (“ADR”) procedure agreed between them or in the absence of agreement, recommended on the application of either party by the Centre for Effective Dispute Resolution. If either party fails or refuses to participate in the ADR procedure, or repeatedly fails to comply with any timescales set out in the ADR procedure, or if the Dispute is not resolved to the satisfaction of both parties within 90 days of the Dispute Notice then either party shall be free to issue court proceedings in relation to the Dispute or to refer the matter to arbitration if agreed by the parties.
	3. Nothing contained in clauses 11.1 or 11.2 shall restrict either party’s freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary right or confidential information before any competent court.

**12. CONFIDENTIALITY**

12.1For the purposes of this Clause 12, ‘Confidential Information’ shall mean any information of a confidential, secret or non-public nature in whatever way disclosed by or on behalf of the Commissioner to the Artist or obtained or created by the Artist on behalf of the Commissioner in the course of completing the Work.

12.2 The Artist undertakes that it shall keep secret and treat as confidential, the Confidential Information and shall keep all such Confidential Information secure and protected against theft, damage, loss or unauthorised access and shall not disclose any such Confidential Information to any third party except as:-

12.2.1 Authorised by the Commissioner;

12.2.2 Necessary for the performance of the Artist’s obligations under this Agreement, in which case the Artist shall impose on any persons to whom it discloses the Confidential Information binding obligations equivalent to those set out in clause 12; or

12.2.3 Required to be disclosed by order of a court or regulatory authority of competent jurisdiction.

12.3 The obligations of clause 12.2 shall survive the variation, renewal or termination of this Agreement but shall not apply to any information which is in or comes into the public domain, or is already known to the Artist, its employees, agents or sub-licensees, other than by breach of this Agreement or any other duty of confidence.

12.4 The Artist will not in any publicity or promotional material or documentation include any reference to the Commissioner, nor use any of the Commissioner’s trade marks, without the prior written approval of the Commissioner’s PR Department. Any request for approval in accordance with this clause should be made by forwarding to the Commissioner’s Representative a copy of the materials in question, together with details of where and when they are to be used, at least 10 Working Days prior to proposed production or use of the materials. The Commissioner reserves the right to remove or edit any references to the Commissioner or any of its related or associated organisations at its complete discretion. The Artist should note that in some instances a licence agreement may need to be entered into and a licence fee paid.

**13. Data Protection**

13.1 In this Contract the terms data subject, data controller or controller, data processor or processor, process, processing, personal data and other words or phrases that have a particular meaning under Data Protection Legislation shall have the same meaning as is ascribed to them under such Data Protection Legislation.

13.2 Where the activities under this Contract involve the Contractor processing any personal data on behalf of the Client in respect of which the Client is data controller, the Contractor shall be acting as a data processor on behalf of the Client.

13.3 To the extent that the Contractor is acting as a data processor on behalf of the Client as referred to under paragraph 10.2 above:

13.3.1 the duration of the Contractor's processing under this Contract shall be limited to the period from the date of this Agreement until, at the choice of the Client, without delay, delete or return all the personal data to the Client and at the Client's request and in any event upon the expiry or termination of this Contract.

13.3.2 the nature of the purposes of the Contractor's processing shall be limited to: [insert details of how and why the personal data will be processed]

13.3.3 the data subjects to which the personal data relates are: [insert the categories of data subjects whose data will be processed]

13.3.4 the type of personal data which shall be processed by the Contractor are: [insert description of the personal data which will be processed]

13.4 The Contractor undertakes to:

13.4.1 only process any personal data on behalf of the Client in accordance with this Contract and the Client's written instructions from time to time except where otherwise required by applicable law;

13.4.2 implement technical and organisational measures to ensure a level of security appropriate to the risks that are presented by such processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data;

13.4.3 notify the Client without undue delay (and in any event within 24 hours) after becoming aware of a personal data breach, such notification shall at least:

13.4.3.1 Describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects and personal data records concerned;

13.4.3.2 The name and contact details of an individual within the data processor’s organisation from whom more information can be obtained;

13.4.3.3 Describe the likely consequences of the personal data breach; and

13.4.3.4 Describe the measures taken or proposed to be taken by the Contractor to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects; and

where, and in so far as it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay;

13.4.4 not to transfer personal data, or cause or permit personal data to be transferred, outside of the European Economic Area (the "EEA") without the prior written consent of the Client, and if such consent is granted only transfer personal data outside of the EEA if the Contractor has provided appropriate safeguards as required under Data Protection Legislation and on condition that enforceable data subject rights and effective legal remedies for data subjects are available; and

13.4.5 observe and comply at all times with applicable Data Protection Legislation where processing any personal data in connection with this Contract and in the course of performing the Services and/or providing any Deliverables, and in particular to observe and comply with Articles 28, 32, 33, 34, 35 and 36 of the GDPR (EU General Data Protection Regulation) that expressly apply to processors, and to otherwise provide the Client with such assistance in complying with the same as it may reasonably expect of a diligent supplier.

**14. GENERAL**

14.1 This Agreement contains the entire agreement between the Parties with respect to the provision of services by the Artist to the Commissioner and supersedes and replaces all previous agreements, whether verbal or written, relating to the provision of services by the Artist to the Commissioner.

14.2 The Commissioner’s rights under this Agreement are in addition to the statutory terms implied in favour of the Commissioner by the Supply of Goods and Services Act 1982 and any other statute.

14.3 If any provisions of this Agreement are held by any court or other competent authority to be void or unenforceable in whole or in part, the Agreement shall continue to be valid as to all its other provisions and the remainder of the affected provision.

14.4 Each Party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

14.5 This Agreement shall in all respects be governed by and construed in accordance with English and Welsh law. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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Signed by the Artist:

Date**:**

**……………………………………………………………**

 in the presence of:

Witness

……………………………………………………………

Full Name

Date:

……………………………………………………………

Signed for and on behalf of

The Commissioner:

**WOODLAND TRUST** by its duly authorised Representatives

………………………………… …………. ………………………

Authorised Signatory Authorised Signatory

………………………………… ………………………………….

Print Name Print Name

……………………………… …………. ………………………

Title Title

Date: Date: