

Dated

28/10/2020

NATURAL ENGLAND

and

**THE BRITISH ASSOCIATION FOR SHOOTING AND
CONSERVATION**

MEMORANDUM OF AGREEMENT

Memorandum of Agreement – Hen Harrier Winter Roost Monitoring Programme

PARTIES

- (1) Natural England of Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX ("**Natural England**").

- (2) The British Association for Shooting and Conservation Limited, whose Registered Office is at Marford Mill, Rossett, Wrexham LL12 OHL Registered in England and Wales Registered Society Number 28488R ("**BASC**").

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. BASC wishes to contribute to Natural England in respect of its Hen Harrier Winter Roost monitoring conservation Programme 2020-21 in England.

- C. The principles that underpin the Programme are recognised by BASC as aligning closely with its own and in consideration of a contribution to the Programme, BASC shall be permitted to align itself with Natural England in accordance with this Agreement.

DEFINITIONS AND INTERPRETATIONS

1.1 The following definitions apply in this Agreement:

Agreement	means this agreement between Natural England and BASC
Announcement	A communication by either Party to the public made in any format or via any medium.
Business Day	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
Commencement Date	means the date as specified within this Agreement.

Confidential Information

means all information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives or advisers to the other Party or its employees, officers, representatives or advisers in connection with this Agreement, concerning:

- (a) the terms of this Agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing Party; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party

Contribution

means the one-off fee of £10,000 provided by BASC under this Agreement.

DPA

means the Data Protection Act 2018.

Environmental Information Regulations or EIR

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

FOIA

means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Force Majeure Event

means any circumstances beyond the reasonable control of a Party which delays or prevents that Party from performing its obligations under this Agreement including abnormally inclement weather, flood, lightning, storm, fire, explosion, failure or shortage of power supplies, crowd disorder or terrorist action, but excluding for the avoidance of doubt any

industrial action occurring amongst Natural England's or BASC staff.

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part.

Marks The trademarks both registered and unregistered owned by BASC provided to Natural England for use in accordance with this Agreement.

Programme The Hen Harriers Winter Roosting conservation programme.

Statutory Consultee Natural England's role as a consultee as specified in the relevant legislation.

Term means the term of this Agreement described in clause 2.1.

1.2 The terms and expressions in this Agreement shall have the meaning as set out in above.

1.3 Clause and paragraph headings shall not affect the interpretation of the Agreement.

1.4 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.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Words in the singular shall include the plural and vice versa.

- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.9 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.
- 1.10 A reference to **writing** or **written** includes faxes and e-mail.
- 1.11 References to clauses are to the clauses of the Agreement.
- 1.12 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. **TERM**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated in accordance with its provisions, for a 12 month period from the date of signing.

3. **OBLIGATIONS OF NATURAL ENGLAND**

- 3.1 During the Term of the Agreement where Natural England make any communication in relation to BASC and the Programme only it shall be required to comply with the provisions relating to public communications under Schedule 1.
- 3.2 When communicating the Programme to the public in accordance with the provisions under Schedule 1 Natural England shall be entitled to use BASC's **Marks** subject to the requirements in Schedule 2.

4. **OBLIGATIONS OF BASC**

- 4.1 During the Term of the Agreement BASC shall be required to comply with the provisions relating to public communication under Schedule 1.
- 4.2 BASC shall ensure that its **Marks** do not infringe the rights of any third party.
- 4.3 BASC shall indemnify Natural England against all liabilities, costs, expenses, damages and losses suffered or incurred directly by Natural England arising out of or in connection with any breach of clause 4.2.

5. CONTRIBUTION

5.1 BASC agrees to pay Natural England a one-off payment of £10,000 ex VAT as a contribution towards the Programme in consideration of Natural England acknowledging that BASC's current principles are aligned to that of the Programme.

5.2 BASC shall pay the Contribution within [30 calendar days] of signature of this Agreement to a bank account nominated by Natural England.

5.3 The Contribution is exclusive of VAT or any similar sales or turnover tax which may be introduced from time to time during the Term. In the event that any tax relating to the Contribution is required to be paid under the relevant regulations, BASC shall pay the required amount to Natural England upon receipt of a valid tax invoice.

6. LIMITATION OF LIABILITY

6.1 Subject to clause 6.4, neither Party shall be liable to the other Party whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, loss of corruption of data or information, or special, indirect or consequential damage suffered by the other Party that arises under or in connection with this Agreement.

6.2 Subject to clause 6.4, Natural England's total liability in aggregate for any and all claims made under this Agreement (howsoever arising) in contract, breach of statutory duty, tort (including but without limitation negligence), misrepresentation or otherwise, arising out of or in connection with this Agreement shall be limited to the amount of the Contribution .

6.3 Subject to clause 6.4, BASC's total liability in aggregate for any and all claims made under this Agreement (howsoever arising) in contract, breach of statutory duty, tort (including but without limitation negligence), misrepresentation or otherwise, arising out of or in connection with this Agreement shall be limited to the amount of the Contribution.

6.4 Nothing in this Agreement shall operate to exclude or limit the liability of either Party for (i) death or personal injury caused by that Party's negligence; or (ii) for fraudulent misrepresentation; (iii) for anything else for which it is illegal to attempt to exclude or limit liability; or (iv) liability arising under the indemnity at clause 4.3.

7. DISPUTE RESOLUTION

7.1 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:

7.1.1 the dispute shall in the first instance be referred to Natural England's Chief Legal Adviser at Natural England, Area 3A Nobel House, 17 Smiths Square, London SW1P 2JR, and to BASC'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 (10) Business Days of the referral;

7.1.2 [If the meeting referred to in clause 7.1.1 does not resolve the dispute, then the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation, either Party may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute. The mediation shall commence within twenty (20) Business Days of the Mediation Notice being served. The Parties will cooperate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

7.2 No Party may commence court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

7.3 Nothing in this clause 7 shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms

8. **INTELLECTUAL PROPERTY RIGHTS**

8.1 BASC hereby grants to Natural England during the Term a non-exclusive, non-transferrable, royalty-free licence to use BASC's Marks only in respect of the Programme and in accordance with Schedule 1 and Schedule 2.

8.2 For the avoidance of doubt, Natural England does not grant BASC any rights in relation to its intellectual property. BASC may not use any Natural England Intellectual Property without Natural England's explicit consent.

8.3 Natural England shall not use any of BASC's **Marks** after expiry or termination of this Agreement without the prior written consent of BASC.

9. TERMINATION

9.1 Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

9.1.1 the other Party has committed a material breach of any of its obligations under this Agreement which is not capable of remedy; or

9.1.2 the other Party has committed a material breach of any of its obligations under this Agreement which is capable of remedy but which is not remedied within twenty (20) Business Days of the relevant Party notifying the other of such breach and requesting that it should be remedied; or

9.2 Without prejudice to any other rights or remedies which Natural England may have, Natural England may terminate the Agreement immediately on notice in writing where, in Natural England's reasonable opinion, the provision of the obligations will or is likely to conflict with Natural England's statutory obligations or with Natural England's obligations as Statutory Consultee.

9.3 Natural England shall be entitled to terminate the Agreement if BASC ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within thirty (30) days thereafter.

9.4 Natural England shall be entitled to terminate the Agreement with immediate effect by giving written notice if in its reasonable opinion the continuation of the Agreement would have a material and adverse impact upon the reputation of Natural England, the Department for Environment, Food and Rural Affairs.

9.5 BASC shall be entitled to terminate the Agreement with immediate effect by giving written notice if in its reasonable opinion the continuation of the Agreement would have a material and adverse impact upon the reputation of BASC.

10. CONSEQUENCES OF TERMINATION

- 10.1 In the event that this Agreement is terminated by either party for whatever reason, Natural England shall be under no obligation to repay the Contribution.
- 10.2 Upon termination both parties shall ensure that all documents, data or information belonging to the other that it may have in its possession is either returned or if requested securely destroyed.
- 10.3 Upon termination all licences granted under the Agreement shall automatically terminate.

11. CONFIDENTIALITY

- 11.1 Each party:
- 11.1.1 shall treat all Confidential Information belonging to the other as confidential and safeguard it accordingly; and
 - 11.1.2 shall not disclose any Confidential Information belonging to the other parties to any other person without the prior written consent of the other parties, 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 (including, for the avoidance of doubt, in accordance with clause 12).
- 11.2 This clause 11 shall not apply to Confidential Information which:
- 11.2.1 is or becomes publicly available (otherwise than by a breach of any obligation of confidentiality); or
 - 11.2.2 was known to a party, without restriction as to its disclosure, before the information was disclosed to it by the other party; or
 - 11.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 11.2.4 is required to be disclosed by law including any requirement for disclosure under the DPA, FOIA or EIR; or
 - 11.2.5 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.
- 11.3 Except as expressly stated in the Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

11.4 The provisions of this clause shall continue to apply after termination or expiry of the Agreement.

12. **FREEDOM OF INFORMATION**

12.1 BASC acknowledges that Natural England is subject to the requirements of the 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 but will discuss any request with BASC and give due consideration to its responses when dealing with such a request.

12.2 Whilst it is not anticipated that Personal Data will be processed pursuant to this Agreement, to the extent that this will occur, the Parties agree to comply with their respective obligations under the Data Protection Legislation and to agree in writing the extent and nature of such processing.

12.3 The provisions of this clause shall continue to apply after termination or expiry of the Agreement.

13. **ANNOUNCEMENTS**

13.1 Any Announcement by either party in relation to this Agreement or the Contribution shall be made in accordance with the provisions within Schedule 1.

14. **PARTNERSHIP/ AGENCY**

14.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

14.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

15. **SUCCESSION**

15.1 In the event that Natural England, as a public body, is succeeded by a statutory body (the "Successor"), the obligations and rights of Natural England under this Agreement shall transfer to the Successor without limitation.

16. **THIRD PARTY RIGHTS**

16.1 A person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

17. VARIATION

17.1 No variation of this Agreement shall be effective unless it is in writing and signed by both Parties (or their authorised representatives).

18. ASSIGNMENT AND OTHER DEALINGS

18.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other Party.

19. WAIVER

19.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. SEVERANCE

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

21. ENTIRE AGREEMENT

21.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22. NOTICES

22.1 Any notice given under this Agreement shall be in writing and shall be delivered personally or by commercial courier to the relevant Party as follows:

22.1.1 to Natural England at its head office;

22.1.2 to BASC at its registered office;

or as otherwise specified by either Party by notice in writing to the other Party.

22.2 Any notice or other communication given in accordance with clause 22.1 will be deemed to have been received:

22.2.1 if delivered by hand, when left at the address referred to in clause 22.1; or

22.2.2 if sent by commercial courier, on the date of signature of the courier's receipt.

22.3 A notice or other communication required to be given under this Agreement shall not validly be given if sent by means other than those listed above in clause 22.2.

23. **STATUTORY DUTIES**

23.1 In entering into this Agreement the Parties agree that any materials provided by Natural England pursuant to the Agreement or in relation to the Programme does not and will not constrain or bind Natural England in respect of its statutory functions or its role as a Statutory Consultee.

23.2 Natural England hereby excludes any warranty that the outputs from the Programme represent Natural England's opinion or otherwise binds Natural England when acting as a Statutory Consultee or otherwise. Any outputs provided by the Programme shall not be deemed to bind or in any other way restrict Natural England in performing its statutory functions.

24. **CORRUPT GIFTS AND PAYMENTS**

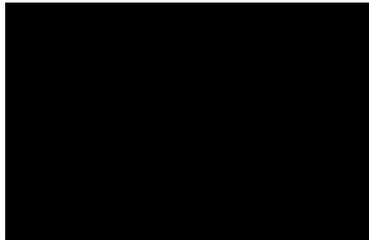
24.1 The Parties shall, and shall procure that its employees and contractors shall, comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (**Relevant Requirements**).

24.2 The Parties shall not offer or give, or agree to give, to any employee, agent, servant or representative of the other 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 the Lead Partner, 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 Parties is drawn to the criminal offences under the Relevant Requirements. The parties shall ensure compliance of it and any employee, agent, servant or representative of theirs with the Relevant Requirements. Natural England shall, and shall procure that the Individual shall, comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (**Relevant Requirements**).

25. **GOVERNING LAW AND JURISDICTION**

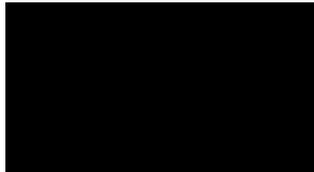
25.1 The Agreement and all disputes or claims arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England.

25.2 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.



Signed for and on behalf of
NATURAL ENGLAND

Director
Name: Rob Cooke
Date: 28th October 2020



Signed for and on behalf of
BASC

Executive Director
Name: Caroline Bedell
Date: 16th October 2020

SCHEDULE 1

PUBLIC ANNOUNCEMENTS AND COMMUNICATIONS

1. Initial Public Statement

1.1 Within 21 days of the Commencement Date, BASC shall be entitled to release a public statement which highlights its contribution to the Programme.

1.2 Natural England shall upon reasonable notice provide appropriate quotes and statements in relation to the above statement.

1.3 Prior to release of the public statement, BASC shall provide Natural England with a copy of the intended statement for approval, which shall not be unreasonably withheld.

2. Future Communications

2.1 Both Parties shall be entitled to promote the Programme throughout the Term, utilising various media platforms, including social media. Natural England shall be entitled to reference the Programme but shall not be obliged to reference BASC.

2.2 Both Parties shall ensure that their respective communications solely in relation to the Programme contain no derogatory remarks about the other Party or the Programme, nor shall any communication contain any message that is contrary to the principles of the Programme.

3. Final Communication

3.1 Prior to the end of the Term BASC shall be entitled to release a public statement highlighting its support of the Programme throughout the Term. BASC shall approach Natural England for appropriate statements and quotes for the statement.

3.2 Prior to release of the final communication, BASC shall send Natural England a copy of the intended communication for approval. Such approval shall not be unreasonably withheld or delayed.

SCHEDULE 2

Use of BASC's Marks

1.1 Natural England shall be entitled to use BASC **Marks** in accordance with this Agreement.

1.2 BASC has clear requirements in relation to how its **Marks** can be used. They cannot be resized, colour changed or amended in any way.

1.3 BASC has a number of different **Marks** which may be used depending on the communication medium used. BASC will supply appropriate **Marks** upon request from Natural England.

1.4 To ensure BASC's corporate identity is correctly maintained, prior to release of any communication, in which any BASC **Mark** is used, approval of the intended communication including where the **Mark** will feature must be given by BASC. Such approval shall not be unreasonably withheld or delayed.