

## Section 3: Definitions and standard terms and conditions

### I. Definitions

In this Contract the following terms shall have the meanings prescribed unless otherwise stated or otherwise required by the context:

**“Accident”** means any event which results in injury, damage or loss

**“Airlifting Works”** means any airlifting of Materials and/or personnel in accordance with the Specification

**“Authority”** means the Peak District National Park Authority

**CDM Regulations”** means the Construction (Design and Management) Regulations 2015 and the current approved code of practice published by the Health and Safety Executive (or equivalent)

**“Contract”** means the Form of Contract to be signed and completed by the Parties

**“Contract Particulars”** means the particulars of the Contract set out in the Form of Contract

**“Contract Period”** means the period set out in the Contract Particulars

**“Contamination”** means any contamination due to a discharge spillage release or emission into any environment medium or substance which is capable of causing harm to the health of living organisms or other interference with the ecological systems of which they form a part

**“Conditions”** means together the Standard Conditions and the Detailed Conditions

**“Contractor”** means the Tenderer whose tender has been accepted by the Authority

**“Contract Variation”** means any addition or variation to the Works in accordance with the Standard Conditions

**“Covid-19”** means the Covid-19 pandemic or any similar or equivalent epidemic as determined by HM Government

**“CROW”** means the Countryside and Rights of Way Act 2000

**“Daily Log”** means an electronic or written report if required in the Specification

**“Defects Liability Period”** means the defects liability period set out in the Contract Particulars (if any)

**“Delivery Site”** means any areas to which the Materials or part are to be delivered more particularly described in the Specification and (if applicable) identified on the Location Maps

**“Donor Site”** means those areas from which the Materials or part are to be sourced in accordance with the Specification and (if applicable) identified on the Location Maps

**“Drop Site”** means any areas to which the Materials or part are to be dropped by helicopter pursuant to the Specification and (if applicable) identified on the Location Maps

**‘Detailed Conditions’** means the conditions contained at **Section I**

**“Environmental Law”** means all laws including common law statute bylaws or regulations applicable in England and Wales and all orders of any Regulatory Authority concerning the protection of the environment or human health

**“Equipment and Machinery”** means vehicles machinery plant tools and all other associated items required for the proper performance of the Works

**“Form of Tender”** means the tender return form at **Section I**

**“Foreman”** means the supervisor assigned by the Contractor to supervise the Works (if any)

**“Force Majeure Event”** means civil commotion, riot, invasion, war (or threat of war), explosion, biological disaster, severe weather event which would result in a reasonably prudent contractor not being able to continue and complete the Works, fire, earthquake, epidemic, pandemic, nuclear disaster, act of terrorism or other natural physical disaster

**“Form of Contract”** means the form of agreement annexed

**“Incident”** means an event which has caused or could have caused, injury, illness or damage to assets, the environment or third parties

**“Invitation to Tender”** means the invitation to tender for the Works

**“Itemised Costs”** means the costs for the Works itemised by the Tenderer in the Form of Tender

**“Landowner”** means those persons who own the freehold or leasehold title to the land on which the Works are to be performed (independent of any grazing or other rights) (if any)

**“Location Maps”** means the maps contained or referred to in **Section I**

**“Lift Site”** means any sites from which the Material or part is to be airlifted pursuant to the Specification and (if applicable) identified on the Location Maps

**“Material(s)”** means all materials utilised by the Contractor in delivering the Works (whether or not supplied by the Authority or the Contractor pursuant to the Contract)

**“Method Statement”** means a statement setting out the proposed methods for the execution of the Works or otherwise and forming part of the Tender

**“Near Miss”** means an event that had the potential to cause injury, damage or loss, but which did not do so

**“Nominated Officer”** means the Authority’s officer who shall be the main point of contact for the Contractor and shall be notified to the Contractor from time to time.

**“Payment”** means a payment in respect of the Works made pursuant to this **Section**

**“Party”** means a party to this Contract (and shall include the plural if applicable)

**“Price”** means the price set out in the Contract Particulars

**“Programme of Works”** means the programme for the Works provided by the Tenderer in the Tender and forming part of the Tender Documentation

**“Project”** means the project as set out in the Project Objectives (if any)

**“Project Objectives”** means the objectives as set out in **Section 3** (if any)

**“Project Progress Report”** means a report provided by the Contractor detailing the progress of the Works with reference to the Programme of Works

**“Purchase Order”** means the Purchase Order form issued by the Nominated Officer in connection with the Works

**“Regulatory Authority”** means the Environment Agency, local authority or any other government department or public body

**“RIDDOR”** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (and updated 2013)

**“Risk Assessment”** means an assessment of the risks associated with the Works

**”Site(s)”** means the Sites used in connection with the Works and shall include Donor Sites/Drop Sites/Lift Sites/Work Sites (as applicable)

**”SSSI”** means an area of land designated as a Site of Special Scientific Interest (or the equivalent or similar designation)

**“Specification”** means the specification and requirements of the Authority as set out in **Section I** together with such modifications additions and variations as may be made in accordance with this Contract (and shall include all references to “Contract Specification”)

**” Standard Conditions”** means these conditions

**“Target Completion Date”** means the date targeted for completion of the Works as set out in the Detailed Conditions and Contract Particulars

**“User”** means those persons granted rights over the land on which the Works are to be performed (if any) including (but not limited to) shooting and grazing rights

**“Tender”** means the tender submitted by the Tenderer (and shall include the term “Tender Return” and “Form of Tender”)

**“Tenderer”** means the person or company submitting a tender

**“Tender Documentation”** means any documents forming part of this Tender and the supplementary documentation (if any) supplied as part of such documentation

**“Unsafe Act”** means any act at variance with the Method Statement that may increase the potential for an Accident

**“Waste Material”** means all packaging, bags, metal tapes, plastic and all other material and rubbish associated with or produced during the course of the Works

**'Works'** means the works set out and consistent with the Project Objectives and in accordance with the Specification and Tender Documentation, together with any alterations and amendments instructed by the Nominated Officer pursuant to the terms of this Contract

**"Works Site"** means those areas on which the Works are to be carried out pursuant to the Specification and (if applicable) identified in the Location Maps

**"Works Commencement Date"** means the date that the Works are to be commenced as set out in the Contract Particulars

**"Works Completion Date"** means the date on which the Nominated Officer specifies in writing to the Contractor that the Works have been completed to its satisfaction in accordance with this Section

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## **2. Interpretation**

2.1 Words importing the singular tense shall include the plural and vice versa and obligations undertaken by more than one person shall be deemed to have been undertaken jointly and severally.

2.2 A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms save to the extent he is named or identified as a person or class of persons specifically intended to take a benefit under the Contract.

2.3 If any provision of the Contract shall become or shall be declared by any court to be invalid or unenforceable in any way, such invalidity or un-enforceability shall in no way impair or affect any other provision of the Contract, all of which shall remain in full force and effect.

2.4 This Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

2.5 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Contract shall restrict or prejudice the exercise of any other right granted by this Contract or other otherwise available to it.

2.6 Upon termination of the Contract no term other than clauses relating to Confidentiality, Insurance, Defects Liability, Liability of the Contractor (including Liquidated Damages (if any)) and Arbitration shall survive unless expressly provided.

## **3. Standard Conditions**

### **1. The Nominated Officer**

The rights, obligations, functions and powers conferred on the Authority under this Contract shall be exercised by the Nominated Officer.

### **2. Performance of Contract**

- a. The Contractor agrees that at all times it will carry out the Works and perform the Contract in compliance with the following conditions:
  - i. in compliance with the Conditions (and any such modifications authorised under the Conditions);
  - ii. in a manner wholly consistent with the Tender Documentation;
  - iii. to the entire satisfaction of the Nominated Officer; and
  - iv. in any event with all the due skill, care and diligence that would be expected of a qualified competent and experienced person undertaking the Works.
- b. The Contractor shall notify the Nominated Officer as soon as practicable and in any event within 24 hours if the Contractor is unable to carry out any part of the Works or perform any of its obligations under the Contract.

### **3. Employees**

- a. The Contractor shall not engage or employ in the supervision and performance of the Contract any person without the necessary qualifications, skill and experience to perform the duties that they are trained and employed to do.
- b. At the request of the Nominated Officer the Contractor shall remove or procure the removal within a reasonable period (or immediately if required) any person employed by the Contractor or sub-contractor for any reasonable reason (provided

the Authority shall not act vexatiously). The Authority shall either at the time or promptly provide to the Contractor written reasons for such request. Such persons shall not be again employed in the performance of Contract without the permission of the Nominated Officer.

- c. The Authority shall not in any circumstances be liable to the Contractor or any of its employees in relation to such action or removal and the Contractor shall fully and promptly indemnify the Authority in respect of any claims brought against it by any such employee.
- d. The Nominated Officer shall have the right if reasonable and on notice to interview any member of the Contractor's staff in connection with the performance of the Contract.
- e. The Contractor shall at all times be fully responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the Contractor and shall fully indemnify and keep indemnified the Authority in respect of any liability of the Authority in respect of them and shall ensure that the employment of all staff complies with relevant statutes and regulations.

#### **4. Signage**

- a. The Contractor shall not fix signs, notices or advertisements on Sites without the prior written approval of the Nominated Officer.

#### **5. Equipment and Machinery (including vehicles)**

- a. The Contractor shall at all times at its own cost provide such Equipment and Machinery as is necessary for the proper performance of the Contract. All Equipment and Machinery must be guarded to current safety standards and left immobilised and secure when unattended. In particular, power take-off shafts on tractor-driven machinery must be fully guarded.
- b. The Contractor shall at all times be fully responsible for licensing, fees, taxes and insurances required in connection with or arising out of the possession or use of the such Equipment and Machinery.
- c. The Contractor shall at its own expense keep all such Equipment and Machinery in good and serviceable repair and maintained in such condition as is commensurate with the proper performance by the Contractor of its obligations under this Contract. The Equipment and Machinery should be used in accordance with the manufacturer's instructions. Operators must be trained and competent. Where industry/Regulatory Authorities or bodies recognise specific standards of competence valid certificates will need to be produced.
- d. The Contractor shall obtain the Authority's written approval to the use and positioning of the Equipment and Machinery prior to the Works Commencement Date and shall use no other Equipment and Machinery without prior approval of the Nominated Officer.
- e. No Equipment or Machinery which is wheeled will be allowed on soft, wet or environmentally sensitive locations without the prior approval of the Nominated Officer.
- f. Any vehicular access indicated on the Location Maps is for Equipment and Machinery approved by the Nominated Officer only. Access for Equipment to environmentally sensitive or SSSI sites or soft or wet areas will only be given during the Contract Period if, in the opinion of the Nominated Officer, this is necessary or desirable. The Contractor will not permit any movement of Equipment and Machinery on or to such areas without the prior approval of the Nominated Officer.
- g. Any damage arising from any breach of this Clause by the Contractor any sub-contractor or their employees agents or invitees shall be immediately repaired or

replaced at the Contractor's expense and to the satisfaction of the Nominated Officer.

- h. The Contractor shall ensure that all highways or other rights of way in the vicinity of the Works used by the Contractor are kept clean of mud and other debris.

## **6. Environmental Provisions**

- a. All Works will be carried out in a manner which conforms to environmental protection legislation and minimises damage to the environment and nature conservation interests. Reference should be made to statutes and codes of practice including (but not limited to):

- i. The Water Resources Act 1991;
- ii. The Environmental Protection Act 1990;
- iii. *DEFRA Statutory Guidance "Waste duty of care: code of practice"*

<https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice/waste-duty-of-care-code-of-practice>

- iv. Codes of practice for Operations on Sites of Special Scientific Interest, Water Catchment Land, Environment Agency Regulations, Regulations issued by Dept. Of Environment, DEFRA and all current Health and Safety Regulations.
- a. The Contractor must comply with all current legal requirements relating to the storage, handling, use and disposal of hazardous substances (including fuel). In particular the Contractor must comply with:
    - i. the Control of Substances Hazardous to Health Regulations 2002 (COSHH; <https://www.hse.gov.uk/coshh/>)
    - ii. the Control of Pollution (Oil Storage) (England) Regulations 2001;
    - iii. Control of Pesticides Regulations 1986 (as amended 1997).
  - b. Plants and animals protected under the Schedules of the Wildlife and Countryside Act 1981 and other statues are not to be harmed or their habitat damaged. Nesting birds are not to be disturbed and are to be reported immediately to the Nominated Officer.
  - c. Any public complaints must be immediately reported to the Nominated Officer. The Contractor shall at its own cost promptly deal with any requests by the Nominated Officer in relation to such complaints (including but not limited to investigating the nature and cause of any such complaint).
  - d. Site(s) must be left clean and tidy at all times.
  - e. Dogs and smoking are not permitted on Site(s).
  - f. Fuels may be stored at some of the Sites but only with prior approval from the Nominated Officer. All fuels must be stored in a suitable, secure container according to the COSHH assessment undertaken by the Contractor and provided to the Authority. Fuels must not be located near to any open watercourse. The type of container used to store fuel must be agreed with the Nominated officer prior to the Works Commencement Date.
  - g. The Contractor shall ensure that it has at all times on the Sites spill kits for fuels and oils specified in its Method Statements and shall immediately use the same in the event of such spillage in accordance with manufacturer's instructions.
  - h. The Contractor shall not damage or permit damage of any areas allocated for Sites or any Access Tracks (if applicable). In the event of any damage, the Contractor shall procure that the same is reinstated to the absolute satisfaction of the Nominated Officer within 1 month of the final invoice date or by the Works Completion Date, whichever is soonest.
  - i. The Contractor is restricted to the specified storage areas notified to it by the Nominated Officer for the unloading and loading of Materials, parking of vehicles, and storage of Materials.

- j. Machinery and Equipment movement on the Sites should be kept to the minimum that might reasonably be expected to complete the Works. Equipment access and egress routes must be agreed with the Nominated Officer prior to the Works Commencement Date. Method Statements must state types of Machinery and Equipment to be used.
- k. The Contractor shall take all precautions to ensure that no pollution arises from the execution of the Works which may result in Contamination either on, in, under or off Site(s). The Contractor shall indemnify the Authority against any costs or damages or claims related to this liability.
- l. It is essential that there is no waste of any Materials at the Sites; the Contractor will be expected to manage operations to minimise waste. All waste produced by the Contractor remains the responsibility of the Contractor. All waste disposal and disposal of Waste Materials must comply with the Waste (England and Wales) Regulations 2011. All containers supplied by the Authority (if any) remain the property of the Authority (subject to any specific provisions otherwise in the Specification).
- m. The Contractor must comply with the Control of Noise at Work Regulations 2005. Additional restrictions may also be applied to prevent noise causing a nuisance to the public.

## 7. Health and Safety

- a. The Contractor will be required to comply with the Health and Safety at Work Act 1974 and all other regulations made under the Act and all other legislation and regulations relevant to the performance of the Contract. Methods Statements should include operational Risk Assessments, copies of which are to be submitted with a tender. Failure to submit RAMS may result in disqualification of the Tender.
- b. Copies of Site Risk Assessments for all Sites used during the Works must be produced to the Nominated Officer before the Works Commencement Date. If a generic Risk Assessment and Method Statement was provided by the Contractor with its Tender Return, the Authority may, at its option require a Site specific Risk Assessment and Method Statement.
- c. The Contractor must at all times adhere to and comply with RAMS.
- d. Health and Safety Plan:
  - ii. **The Contractor is to submit a copy of his Health and Safety Policy** which is issued to his employees, to the Nominated Officer. This will form part of the site safety plan (“the Site Safety Plan”).
  - iii. **The RAMS will form part of the Site Safety Plan.** Prior to commencing any Works, the Contractor will submit any alterations to the Method Statements that may be necessary, for the approval of the Nominated Officer. The Contractor’s Health & Safety plan will be subject to the Nominated Officers approval, prior to the Works Commencement Date.
- e. The Contractor must take the lead in ensuring the health and safety of all those involved in the Contract at the Sites.
- f. The Contractor must provide all appropriate clothing and Equipment and ensure that all persons working under his control wear/use the clothing and Equipment as required. This includes high visibility clothing.
- g. The Contractor is responsible for the provision of first-aid cover and facilities for its employees, in accordance with the Health and Safety (First-Aid) Regulations 1981.
- h. The Authority may instruct the Contractor, or any person working for the Contractor, to suspend work if there is imminent risk of injury to any person.
- i. The Contractor is responsible for recording any accidents in the Contractor’s accident book, in accordance with the Health and Safety at Work Act 1974 (HSW).
- j. The Contractor is responsible for reporting any notifiable incidents to the Health and Safety Executive, in accordance with the Reporting of Injuries, Diseases and

Dangerous Occurrences Regulations 2013  
(RIDDOR). <https://www.hse.gov.uk/riddor/index.htm>

- k. All records produced under this Clause must be forwarded to the Nominated Officer within 24 hours of completion. These should be submitted in compliance with the Data Protection Act 2018.
- l. The Contractor must be aware that the Works Sites may be accessible by the public and must take all appropriate precautions to protect these persons and their property, including, if required by the Nominated Officer, the provision of warning notices/signs or barriers.
- m. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.
- n. All Equipment and Machinery that could cause environmental damage and/or a health and safety risk to members of the public or land users must be secured overnight to prevent theft or misuse. Contractors are responsible for securing appropriate locations nearby to accommodate their equipment and operations whilst the Works are not being undertaken.
- o. Services:
  - i. Location of services; The Contractor is to liaise with all relevant Statutory Authorities as to the location of any services that may affect the Works before the Works Commencement Date and comply with their requirements, the requirements of the Authority and relevant Health & Safety Guidance (HSG47 or any replacement from time to time);
  - ii. Excavations:
    - 1. Must be covered when unattended;
    - 2. If over 1.2m deep have trench support (or such comparable measures taken) before persons enter them;
    - 3. If over 1m in depth and in existence for less than 1 week: be cordoned off;
    - 4. If over 1m in depth and in existence for more than 1 week: be barriered.
- p. Site Safety Considerations
  - i. Ground conditions: Details concerning ground contamination and instability are not available and the Contractor should make its own enquiries in that regard.
  - ii. No representation is made by the Authority as to the existence of Contamination at the Sites or otherwise.
  - iii. The Contractor shall follow the Forestry & Arboriculture Safety & Training Council (FASTCo) Safety Guide.
  - iv. Lifting of heavy objects; the Contractor and employees should follow Manual Handling Operation Regulations 1992 (or any replacement).
  - v. The Contractor shall employ the 'best practical means' as defined in the Control of Pollution Act 1974 to minimise noise and vibration resulting from his operation, and shall have due regard to British Standard B35228 1975, Code of Practice for Noise Control on Construction Sites (or subsequent provisions).
  - vi. The Contractor must take all necessary additional precautions when working alongside roads and comply with Chapter 8 of the Traffic Signs Manual (or any replacement).
  - vii. The Contractor must comply with the Electricity at Work Regulations 1989 (or any replacement).

## 8. British Standards

- a. These provisions shall apply only where any of the Material is supplied by a Contractor.
- b. Except where specified to the contrary all Materials are to comply with the latest British Standard specification or equivalent national standard of another Member State of the European Community or international standard (whichever is the higher). All Materials shall be fit for purpose.
- c. In the event of the Nominated Officer (whose decision shall be final) not being satisfied that the Materials meet the required standard the Contractor shall comply with the latest British Standard Specification and no claim for additional costs incurred with such compliance will be accepted. Except where specified in the Tender Documentation to the contrary all workmanship is to comply with the latest British Standard Code of Practice.

## **9. Project Progress Report**

- a. The Contractor shall promptly supply the Authority with a Project Progress Report on the dates agreed and notified to the Contractor.

## **10. Variation of Contract**

- a. Without prejudice to any other of the Conditions a Contract Variation shall not be valid or of any effect unless it is agreed pursuant to this clause and confirmed in writing (including e-mail) by the Nominated Officer and the duly authorised agent or representative of the Contractor. Contract Variations for which there is no written confirmation are not authorised and will not be paid for under any circumstances. No other variations to the Contract shall be accepted by the Authority.
- b. The Nominated Officer may request any Contract Variation that are in his opinion necessary or desirable for the most efficient performance of the Contract.
- c. Upon receipt of the request for a Contract Variation the Contractor shall calculate the additional cost (if any) of incorporating the Contract Variation into the Works and shall as soon as practicable provide details of such sum (in writing) to the Authority ("the Contract Variation Sum") together with an indication of whether the proposed Contract Variation shall cause any delay on the Programme of Works.
- d. If the Contract Variation Sum is agreed by the Authority the Contract Variation shall be recorded in writing and shall form a part of the Works.
- e. Where in the absolute opinion of the Nominated Officer a written Contract Variation is impossible or impractical the Nominated Officer may give such order verbally but shall confirm it in writing to the Contractor as soon as practicable after the event and in any case within 48 hours of the Contract Variation.
- f. No Contract Variation in accordance with this clause shall in any way vitiate or invalidate the Contract but the Contract Variation Sum (if any) shall be taken into account in ascertaining the amount of the Payments (if any).

## **11. Payment and Invoices**

- a. On completion of the Contract (or any phase of the Contract) pursuant to a Purchase Order form and provided that the Contractor shall have performed his duties, obligations and functions under the Contract to the satisfaction of the Nominated Officer the Contractor may submit to the Nominated Officer an invoice ("Invoice") for the sum due to him in respect of that Purchase Order form.
- b. Within thirty (30) days of the receipt of the Invoice (unless the Nominated Officer shall disagree with the amount claimed or require further information) the Nominated Officer shall (subject to being satisfied as to the performance and standard of the Contractor's work) certify that the Invoice is correct for payment and shall procure payment to the Contractor of the amount so certified.
- c. Provisions for phasing of Payments (if any) shall be included in the Contract.

## **12. Value Added Tax**



- a. All sums payable under this Contract are (unless otherwise stated) exclusive of VAT and other duties or taxes and shall be payable upon production of a valid VAT invoice.

### **13. CDM Regulations**

- a. The Authority and the Contractor acknowledge that they are aware and undertake to the other that in relation to the Works and Site he will duly comply with the CDM Regulations to the extent applicable to the Project.
- b. Without limitation, in accordance with the CDM Regulations:-
  - i. The Authority's main duty is to plan, manage, monitor and coordinate health and safety during pre-construction phase.
  - ii. The Contractor's main duty is to plan, manage, monitor and coordinate the works under their control in a way that ensures the health and safety of anyone it might affect (including members of the public) during the construction phase.
  - iii. The Contractor shall ensure that the Health and Safety Plan is received by the Authority before any works under the Contract is commenced and that any subsequent amendment to it by the Contractor is notified to the Authority;
  - iv. Promptly upon the written request of the Principal Designer (as defined in the CDM Regulations (where appointed)) and in the absence of a Principal Designer being appointed the Authority, the Contractor shall provide (and shall ensure that any sub-contractor through the Contractor provides) such information as the Principal Designer requires for the preparation of the health and safety file.
- c. The Contractor will ensure that all personnel engaged in undertaking the works shall be competent to undertake the Works, in accordance with the CDM Regulations.
- d. The Contractor shall at all times during the subsistence and operation of the Contract provide a sufficient number of personnel having the requisite type and level of qualifications, expertise and experience to operate as team leaders to control, supervise and perform its obligations under the contract to ensure that such performance is carried out efficiently and safely. In particular but without limitation, such personnel shall be required to possess adequate knowledge of the operations to be carried out (including methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) as may be requisite for the satisfactory performance of the Contract and shall notify the Nominated Officer of their names and contact details.
- e. The Contractor shall notify the Nominated Officer of the name, address and telephone number of the person who will be the authorised agent or representative appointed by the Contractor to be in full operational control and who is authorised by the Contractor to receive on behalf of the Contractor directions and instructions from the Nominated Officer. Any instructions given to this representative shall be deemed to have been issued to the Contractor.

### **14. Insurance**

- a. The Contractor shall at all times from and including the Works Commencement Date or Contract Date (whichever is the earlier) effect and maintain in force such policies of insurance with reputable insurers approved by the Authority in respect of its liabilities hereunder and shall fully insure and indemnify the Authority against liability:
  - 1. To the Authority and to any of their employees;
  - 2. To the employees of the Contractor;
  - 3. To the public and to any other person (including for the avoidance of doubt a Landowner or User);

4. In respect of the replacement of the Works.  
in the sum of at least £5,000,000 (FIVE MILLION POUNDS) in respect of any single claim (£10,000,000 TEN MILLION POUNDS in the event that there are any Airlifting Works).
- b. The Contractor shall be liable for and indemnify the Authority against and insure and procure any sub-contractor to insure against any expense, liability, loss, claim, action, or proceedings in respect of any damage whatsoever (whether directly or indirectly) to private property real or personal in so far as such damage arises out of or in the course of or by reason of carrying out the Contract and which is due to any negligence, omission or default of the Contractor or person for whom the sub-contractor is responsible.
  - c. The Contractor shall, prior to the Works Commencement Date or Contract Date (whichever is the earlier) and also upon request supply copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this Clause.
  - d. In the event that the Contractor is in breach of this Clause the Authority may be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

### **15. Agency**

- a. The Contractor is not and shall not in any circumstance hold itself out as being the agent of the Authority.
- b. The Contractor is not and shall in no circumstance hold itself out as being authorised to enter into any Contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.
- c. The Contractor will not itself or permit any employee or other person engaged by the Contractor to represent themselves as being, servants or agents of the Authority for any purposes whatsoever.

### **16. Liability of the Contractor**

- a. The Contractor hereby indemnifies and shall keep indemnified the Authority from and against any liability to any person whatsoever arising directly or indirectly out of or connected with the performance, non-performance or breach of the Contract or any act neglect default or omission of any employee, agent, servant invitee or visitor of the Contractor or any sub-contractor including, without limitation:
  - i. any and all losses, costs, expenses, (including professional and legal fees) liabilities and damages;
  - ii. any and all proceedings, demands, penalties, statutory charges and fines;
  - iii. death, illness or injury to any third party or for any loss of or damage to any property belonging to any third party and against all losses, costs, expenses, liabilities, damages, claims, demands or causes of action resulting therefrom;
- b. in each case to the extent arising out the Contractor's or any of its sub-contractors' breach or failure in performance of the Contractor's obligations in the Contract or omission whether arising from breach of contract, negligence or default or otherwise, except and to the extent that such losses, costs, expenses, liabilities, damages, claims, demands were wholly and directly caused by the negligence or wilful misconduct of the Authority or its officers, agents or employees.
- c. The Contractor shall indemnify the Authority against all claims liability and actions for or in respect of any damage or injury to property or persons or claims for the infringement of patent rights or copyrights arising from or occasioned by the conduct of the Contractor or his sub-contractor or of any person employed by him or them or arising howsoever from or by the manner in which the Works shall be

performed and executed and against all costs and proceedings in respect of any such claim.

#### **17. Materials**

- a. If required in the Specification and Contract Objectives, the Contractor must provide its own Equipment suitable for movement and loading of all Materials for the Works.
- b. The Contractor shall be responsible for all Materials for the duration of the Contract and shall indemnify the Authority against loss or damage.
- c. All Materials provided by the Authority will remain the property of the Authority.
- d. Any damage or loss which may occur during the Contract Period in relation to the Works or Materials or Equipment on or before the Works Completion Date or to any Materials implements or property whatsoever of the Authority which may at any time for the purpose of the Works be in the custody or use of the Contractor or sub-contractor which shall arise from negligence of the Contractor or theft, spoiling, decay, waste, wind, rain or fire or criminal damage shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Nominated Officer.

#### **18. Force Majeure**

- a. Neither party shall be liable for any failure to fulfil or delay in fulfilling its obligations under the Contract (other than an obligation to pay monies due) where such delay or failure is due to a Force Majeure Event Provided That:
  - i. the party so affected could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, it ought reasonably to have taken but it did not take; and
  - ii. the party so affected has taken all steps as are reasonably necessary to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Contract in any other way that is reasonably practicable; and
  - iii. the party so affected shall immediately notify the other in writing of the existence of the Force Majeure Event and of its anticipated duration.
- b. If the Contractor is the party affected by the Force Majeure Event, the Authority shall be relieved of its liability to make any payments to the Contractor for the duration of the Force Majeure Event and shall be entitled to obtain services the same as or similar to the Works from any third party during such period that the Force Majeure Event continues and the Contractor shall give all assistance and information necessary to such third party to enable such third party to fulfil the obligations of the Contractor under the Contract.
- c. For the avoidance of doubt, Covid-19 shall not be treated as a Force Majeure Event.

#### **19. Defects Liability Provisions**

- a. The Authority shall have the right at any time to inspect the progress of the Works and may make representations to the Contractor following any such inspection.
- b. The Contractor shall comply with the Nominated Officers directions following such inspections (insofar as they do not constitute Contract Variations).
- c. Upon the completion of the Works the Contractor shall notify the Nominated Officer and the Nominated Officer shall in its absolute discretion notify that the Works have been completed ("the Completion Certificate").
- d. In the event that the Nominated Officer cannot so notify the Contractor shall at its own cost carry out such works as shall be required to enable the Nominated Officer to confirm that the Works have been completed to its entire satisfaction.
- e. The Contractor shall procure that all defects in the Works notified to it during the Defects Liability Period by the Nominated Officer shall be promptly and at its own cost made good to the Nominated Officer's entire satisfaction.

## 20. Bribery and Corruption

- a. The Contractor warrants and undertakes to the Authority that:
  - i. it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Anti-Bribery Law”);
  - ii. it has not and shall not give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
  - iii. it will comply with the Authority’s anti-bribery policy as may be amended from time to time, a copy of which will be provided to Contractor on written request;
  - iv. it will procure that any person who performs or has performed services for or on its behalf (“Associated Person”) in connection with this Contract complies with this Clause;
  - v. it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this Clause;
  - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
  - vii. from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under this Clause and will provide any information reasonably requested by the Authority in support of such compliance;
  - viii. it shall notify the Authority as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.
- b. Breach of any undertakings in this clause shall be deemed to be a material breach of the Contract for the purposes of **Clause 20 (Termination)**.

## 21. Termination

- a. The Authority shall be entitled immediately upon the happening of any of the following events to terminate this Contract by the service of a notice (a “Termination Notice”), such events being:
  - i. The failure to materially perform the obligations under **Clause 2 (Performance)**;
  - ii. Any material breach by the Contractor of any other provision of the Contract;
  - iii. The Contractor having failed to perform a material part of the Contract for a period of 7 consecutive days;
  - iv. The Contractor suffering a legal claim against its possessions or if the Contractor consists of one or more individual, any such individual dying, entering into a composition or arrangement for the benefit of its creditors or having a receiving order in bankruptcy made against it or, if the Contractor consists of a body corporate, the Contractor having a Receiver or a Receiver and a Manager appointed or being the subject of a resolution or order for winding up (save for an amalgamation or reconstruction of a limited company);
  - v. Any governmental or other licence, consent or authority required by the Contractor to enable it to perform any of its obligations under the Contract ceases to be in full force and effect or at any time it becomes unlawful for the Contractor to perform any of its obligations thereunder;
  - vi. The continuation of a Force Majeure Event for a period of time which in the opinion of the Nominated Officer materially affects or prejudices compliance by the Contractor of its obligations to the Authority or is likely to do so, preventing the Contractor from fulfilling its obligations under the Contract

- for a period of 45 days or more or the occurrence of a Force Majeure Event which in the opinion of the Nominated Officer is substantially unlikely to cease to be a Force Majeure Event for the remainder of the Contract Period
- vii. The withdrawal of the Authority's funding for a Project;
  - viii. The re-organisation (and/or abolition) of the Authority to the extent that the licence consent or authority required by it to enable to perform any of its obligations under the Contract ceases to be in full force and effect or at any time it becomes unlawful for the Authority to perform any of its obligations thereunder.
- b. A Termination Notice shall be in writing and may be given by the Nominated Officer on behalf of the Authority.
  - c. Upon receipt of a Termination Notice, in addition to such consequences as are set out in other provisions of the Contract:
    - i. The Contractor shall forthwith cease to perform of the Works;
    - ii. (Save where a Termination Notice is served pursuant to an event within the Authority's control) the Contractor shall fully and promptly indemnify the Authority in respect of:
      - a. all losses damages and costs (including professional costs) and expenses incurred or suffered by the Authority from such termination; and
      - b. the cost of causing to be performed such part of the Contract as would be performed by the Contractor during the remainder of the Contract Period. The Authority shall be at liberty to procure such performance by any persons (whether or not employees of the Authority) as the Authority shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method of having such Works performed.
    - iii. The Authority shall be under no obligation to make any further Payments to the Contractor and shall be entitled to retain any Payments which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Authority all sums due under this Contract or to deduct from it any sum due from the Contractor to the Authority under this Contract.
    - iv. The Authority shall not be liable for any claim demands costs expenses losses incurred or suffered by the Contractor (or any sub-contractor) resulting (either directly or indirectly) from the serving of a Termination Notice.
    - v. The Contractor shall immediately give up possession of the Site(s) in accordance with these Conditions.

## **22. Contract Suspension**

- a. In the event that a Termination Event occurs the Authority may at its option on written notice to the Contractor suspend this Contract for such reasonable period as the Authority shall notify the Contractor (the "Contract Suspension Period") and the Authority shall have the right to instruct another contractor to carry out the Works during the Contract Suspension Period and the cost of the Authority in relation to such suspension shall be deducted from the Price.
- b. The exercise of the rights in this Clause above shall be without prejudice to any antecedent claim by the Authority and shall not prohibit the Authority from serving a Termination Notice at any time.

## **23. Assignment**

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract or any part thereof and shall give written notice of any assignment or transfer to the Contractor.
- b. The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or there under without the written consent of the Authority.
- c. The Contractor shall not sub-let the whole or any part of the Works without the written consent of the Nominated Officer together with any conditions. If such consent is given it shall not relieve the Contractor from liability or obligation under the Contract and it shall be responsible for the acts defaults omissions and neglects of any sub-contractor, its agents, servants or workmen.

#### **24. Gangmasters (Licensing) Act 2004 (“the Act”)**

- a. If the Works are subject to the Act (and if in doubt the Contractor shall liaise with the Nominated Officer) or (at the direction of the Authority) the Contractor shall obtain and provide a full copy of its gangmasters licence pursuant to the Act (“the Licence”).
- b. Where the Contractor is required to obtain a Licence, it shall ensure that such licence is valid and maintained and shall notify the Authority immediately if such licence is revoked or modified.

#### **25. Title**

- a. All items of whatever nature and any other artefacts excavated or found during the execution of the Works shall remain the property of the Landowner, and the Contractor will have no right of ownership. The Nominated Officer must be immediately notified of the location of any artefacts found during the course of the Works and the Contractor shall comply with all instructions issued by the Nominated Officer.

#### **26. Notices**

- a. No notice to be served upon the Authority shall be valid or effective unless it is sent by prepaid post or delivered by hand to the Authority at the address specified below or to such other address as the Nominated Officer may notify the Contractor in writing.

**Head of Law  
Peak District National Park Authority  
Aldern House  
Baslow Road  
Bakewell  
Derbyshire  
DE45 1AE**

Any notice to be served upon the Contractor shall be valid and effective if it is sent by prepaid post or delivered by hand to the registered principal place of business or to the address shown in this Contract if different or is delivered by hand to a Director, Company Secretary, or other responsible representative of the Contractor.

#### **27. Arbitration**

- a. All disputes under this Contract shall be settled by arbitration under the Arbitration Act 1996 (or any statutory modification or re-enactment thereof for the time being in force) by a single Arbitrator to be appointed in default of agreement between the parties by the President of the Institute of Arbitrators.
- b. Any award or decision of such Arbitrator shall be final and binding on the Parties.
- c. Unless the Contract shall have already been determined or abandoned the Contractor shall in every case continue to proceed with the Works with all due diligence and the Contractor and the Authority shall all give effect to every such

decision of the Nominated Officer unless and until the same shall be revised by an arbitrator as hereinafter provided.

### **28. Observation of Statutory Requirements**

The Contractor shall at all times observe and comply with all the relevant Acts of Parliament, regulations and codes of practice (the Statutory Requirements) relating to the performance of the Works including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Works (where the same are within the power and control of the Contractor) and the Contractor shall indemnify the Authority accordingly.

### **29. Stamp Duty and Professional Fees**

Each party shall bear its own legal and other fees in relation to the preparation and submission of the Tender Documentation and any formal Contract documents arising therefrom.

### **30. Waiver**

Failure by the Authority at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Authority to enforce any provision in accordance with these conditions.

### **31. Whole Contract**

The Contract (which includes the Tender Documentation) constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the parties with respect thereto.

### **32. Warranty**

The Contractor and the Authority warrant their power to enter into this Contract and have obtained all necessary approvals to do so.

### **33. Rights and Duties Reserved**

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the Authority's rights or powers duties and obligations in the exercise of its functions as a local authority for the enforcement of or pursuance of any enactment by-law or regulation for the time being in force.

### **34. Confidentiality and Data Protection**

- a. Each Party will procure that all confidential information which may already have come into the ownership, possession or control it or of a subsidiary prior to the execution of the Contract provided by the Contractor, or which may at any time hereafter until termination hereof come into the ownership, possession, or control of either of them relating to the other Party or its operation or management, or otherwise in connection with or in anticipation of the performance of the Contract (hereinafter referred to as "the Confidential Information"), shall strictly:-
  - i. not be used for any purpose other than the performance of the Contract;
  - ii. not to be disclosed during the continuance of the Contract to any third party including for the avoidance of doubt any company, organisation or individual whatsoever employed by the Contractor now or at any time in the future; and
  - iii. not after termination be used for any purpose whatever or disclosed to any third party.

- b. The receiving Party shall inform the disclosing Party immediately if it comes to the notice of the receiving Party that any confidential information has been improperly disclosed or misused.
- c. The above obligations shall cease to apply to any particular piece of Confidential Information once it becomes public knowledge other than through any act or default of the receiving Party or any person acting or employed by them or acting on their behalf.
- d. Upon termination hereof, or at the request of the Authority the receiving Party shall procure that all documents and other written material (including material on disks and tape) containing Confidential Information shall be returned (together with all copies thereof) to the disclosing Party.
- e. The Contractor and Authority will comply with their respective obligations under the General Data Protection Regulations and the Data Protection Act 2018.
- f. To the extent that the contractor is a data processor under the contract, of data in respect of which the purchaser is the data controller, it is agreed that
  - i. The Contractor may only use the data on the instruction of the purchaser. The data cannot be used for the contractor's own purposes;
  - ii. The Contractor shall, upon request, demonstrate to the reasonable satisfaction of the Authority the security and related organisational measures operated by the supplier and as applied to the Contract;
  - iii. The Contractor shall ensure the written agreement of any sub-contractor to observe the same obligations to the purchaser as outlined above.

### **35. Freedom of Information and Transparency**

- a. The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR") and the Local Government Transparency Code 2014 ("the Code"). The Contractor shall assist and co-operate with the Authority as necessary to comply with these requirements and acknowledge that the Authority may be required to disclose information pursuant to the FOIA, the EIR or the Code. The Contractor shall provide all necessary assistance reasonably requested to enable the Authority to respond to a request for information within the time for compliance and permit the Authority to inspect such records as requested from time to time.
- b. The Contractor acknowledges that all payments over £250 are published in the public domain in accordance with guidelines issued by the Department of Communities and Local Government.

### **36. Copyright**

- a. The copyright, design right, trademark or patent or other form of intellectual property in all data, reports, documents, drawings and designs (whether in paper or electronic format) created by the Contractor or the Authority in connection with the Works shall be vested in the Authority. The use or disclosure of any such report for any purpose at any time is strictly prohibited except with the explicit written consent of the Authority.

### **37. Contract Period**

- a. This Contract shall extend for the Contract Period and shall not be terminable by either party within that period save in accordance with these Conditions.
- b. Notwithstanding the Contractor's obligations to maintain a capability to carry out the Works under the Contract or the Contractor's obligations generally, the Authority does not guarantee any level or volume of work or Purchase Order forms in respect of the Works at any time during the Contract Period.



### **38. Sub-contracting**

- a. The Authority's prior written approval must be obtained before any part of the Works is sub-contracted. The Authority reserves the right to refuse such approval as its absolute discretion.
- b. An approved sub-contractor must give a direct warranty and undertaking to the Authority but the Tenderer will nonetheless remain primarily liable for carrying out and completing the Works.

### **39. Ancient Monuments and Archaeological Areas**

- a. Unauthorised works and wilful or reckless damage to Scheduled Monuments are offences under Sections 2 and 28 of the Ancient Monuments and Archaeological Areas (as amended) Act 1979 ("the 1979 Act").
- b. The Contractor (and any subcontractor) must have particular regard to the following statement provided by English Heritage:  
"Any person...operating or causing to be operated mechanised cutting equipment on a Scheduled Monument in England containing upstanding stone features would potentially place themselves at risk of prosecution under the above Act given the reckless nature of such action in the clear knowledge of the following facts:-
  - i. Scheduled Monuments are protected under the 1979 Act and exist at numerous locations across England.
  - ii. The locations of Scheduled Monuments can be readily established by correspondence with English Heritage.
  - iii. The practise of mechanised cutting of heather when conducted over a cairnfield or other upstanding stone features is likely to cause damage to such features which may comprise offences under Sections 2 and 28 of the 1979 Act
- c. The Authority shall, wherever possible provide details of any Scheduled Monuments at any of the Sites however, this does not obviate the need for the Contractor to carry out its own searches and enquiries including (but not limited to);
  - i. Consultation of the National Heritage List for England at <https://historicengland.org.uk/listing/the-list/> and
  - ii. Consultation of the Peak District National Park Authority archaeological department.
- d. Any Contractor (and any subcontractors) shall provide a copy of all such searches, enquiries and associated consents to the Nominated Officer.
- e. The Contractor (and any subcontractors) shall comply with all conditions requirements and consents required by English Heritage and Peak District National Park (whether supplied by the Authority or otherwise) relating to the Works at the Sites and shall notify the Authority of and fully indemnify the Authority against all losses costs claims and demands arising from any breach of such conditions consents or requirements or any breach of the 1979 Act.

### **40. Conditions**

- a. In the event of any contradiction between the Standard Conditions and the Detailed Conditions then the Detailed Conditions shall prevail.
- b. The Conditions and all other conditions contained in the Tender Documentation shall take precedence over all other terms and conditions provided by a Contractor (including any terms and conditions which a Contractor purports to imply under any confirmation of order, specification or other document).
- c. No terms and conditions endorsed on, delivered with or contained in a confirmation of order, specification or other document provided by the Contractor shall form part of the Contract.
- d.

### **41. Equality**

- a. The Authority is subject to the Public Sector Equality Duty which requires us, in our work and decision making, have due regard to the need to:
  - i. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
  - ii. Advance equality of opportunity between people who share a protected characteristic and those who do not;
  - iii. Foster good relations between people who share a protected characteristic and those who do not.
- b. The Authority's [Equalities Policy and Action Plan](#) is available on its website. The Supplier shall not unlawfully discriminate in any way which is in conflict with that policy, and shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

#### **42. COVID-19**

- a. The Contractor shall at all times comply with the current Covid-19 operating procedure guidance appropriate for the Works.
- b. A breach of this clause shall be treated as material breach of contract.
- c. Any costs of impact on the programme of works resulting from Covid-19 (save for any resulting from a breach of this provision) shall be included in the Price and for the avoidance of doubt, shall not be treated as a Force Majeure Event.