**Rights of Way Works Contract**

**Standard Terms and Conditions**

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General provisions

# Definitions and Interpretation

Unless defined below or otherwise set out within this Contract or unless the context otherwise requires, the words and phrases within this Contract shall have the meaning ascribed to them.

Access Date: the date on which the Contractor will be given access to the Site to commence the Works, as set out in the Works Specification.

Approval: the written approval of the Authority.

Authorised Representative**:** the persons respectively designated as such by the Authority and the Contractor.

CDM Regulations: Construction (Design and Management) Regulations 2015 (as amended or replaced from time to time).

Completion Date: the completion date set out in the Works Specification.

Contract: means the contract between the Authority and the Contractor for the Works which is constituted by the Contractor’s countersignature of the Award Letter and includes the Award Letter and Annexes (including these terms and conditions);

Contract Price**:** the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Priced Bill of Quantities, for the full and proper performance by the Contractor of its obligations under the Contract.

Contract Year**:** a period of 12 months, commencing on the Start Date.

Daily Rate: shall be the rate specified in the Works Specification.

Default**:** any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Defects Period: means the defects period specified in the Works Specification.

Deliverables**:** those deliverables listed in the Works Specification.

Equipment**:** the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

Force Majeure**:** any event or occurrence that is:

1. outside the reasonable control of the Contractor, and
2. which
   * 1. is not attributable to any act or failure to take preventative action by the Contractor; or
     2. is an event which an experienced contractor would have judged to have such a small chance of occurring that it would have been unreasonable to have allowed for it.

Good Industry Practice**:** standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Key Personnel**:** any individual identified in the Works Specification as being key personnel.

Month**:** calendar month.

Award Letter**:** the Award Letter issued by the Authority to the Contractor to which are annexed these terms and conditions, the Works Specification, and the Priced Bill of Quantities.

Pre-Construction Services: means the pre-construction services set out in the Works Specification.

Priced Bill of Quantities: the priced bill of quantities submitted by the Contractor in its Tender and which forms Annex 2 of the Award Letter.

Property**:** the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

Quality Standards**:** the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in the Works Specification) and any other quality standards set out in the Works Specification.

Site**:** the location where the Works are to be carried out, as set out in the Works Specification.

Staff**:** all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's agents, Contractors and Sub-Contractors used in the performance of its obligations under the Contract.

Staff Vetting Procedures**:** the Authority's procedures and departmental policies for the vetting of personnel for:

### eligibility to work in the UK;

### the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure [including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

### the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Start Date**:** the start date set out in the Works Specification.

Sub-Contract**:** any contract between the Contractor and a third party under which the Contractor agrees to source the provision of any of the Works from that third party.

Sub-Contractor**:** the contractors or service providers that enter into a Sub-Contract with the Contractor.

Tender**:** the document(s) submitted by the Contractor to the Authority.

VAT**:** value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Works**:** the minor works to be carried out as specified in the Works Specification.

Works Specification: the works specification which forms Annex 3 of the Award Letter.

## In the event of and only to the extent of any conflict between the Award Letter and its annexes, the conflict shall be resolved in accordance with the following order of precedence:

### these terms and conditions which form Annex 1 of the Award Letter;

### the Works Specification forming Annex 3 of the Award Letter (but excluding the Supplier’s Response);

### the Priced Bill of Quantities forming Annex 2 of the Award Letter;

### the Award Letter (but excluding the Annexes);

# Contractor's status

The Contractor shall at all times be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

# Authority's obligations

Except as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Contractor.

# Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documents and information supplied to the Authority by the Contractor in connection with the carrying out of the Works and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

Carrying out the Works

# Works

## The Contractor shall carry out and complete the Pre-Construction Services and the Works in accordance with:

### the Works Specification;

### the Tender;

### Good Industry Practice;

### all applicable Laws.

## The Authority may inspect and examine the manner in which the Contractor carries out the Works at the Site on reasonable notice.

## The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## The Contractor shall:

### at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;

### to the extent that the standard of Works has not been specified in the Contract, agree the relevant standard of the Works with the Authority before carrying out the Works; and

### at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

## The contractor shall have taken into account the site conditions when pricing the Works to the extent a reasonable and experienced Contractor would have allowed for when pricing the Works and have taken into account

### any information that has been provided about the Site;

### publicly available information;

### information that could have been understood from a visual inspection of the site;

### other information which a contractor acting in accordance with Good Industry Practice would have obtained.

## The Contractor shall ensure that all Staff carrying out the Works shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper carrying out of the Works.

# Commencement and Completion

## The Contractor shall provide the Pre-Construction Services on and from the Start Date.

## The Contractor shall commence the Works on the Access Date and shall complete the Works by the Completion Date. Timely carrying out of the Works shall be of the essence of the Contract.

## The Contractor shall not commence the Works at the Site until the Authority has given its written Approval.

# Extension of time

## If it appears that the Completion Date will not be met by reason of any of the matters specified in clause 7.2 below, the Contractor shall notify the Authority and the Authority shall within 14 days of such notice assess the likely effect of such matters. No later than the end of such period the Authority shall notify the Contractor of its reasonable assessment and any revised Completion Date.

## The matters are:

### Force Majeure;

### Variations to the Works Specification required by the Authority;

### Any breach of this Contract, impediment, prevention or default by the Authority or any person for whom it is responsible.

## The Completion Date will not be affected by any of the matters in clause 7.2 above if and to the extent they are due to the negligence, omission, default, breach of Contract or breach of statutory duty of the Contractor or those acting on its behalf.

# Liquidated Damages

## If practical completion is not achieved by the Completion Date the Authority may recover from the Contractor liquidated damages for each day of delay at the Daily Rate. The Authority shall notify the Contractor of such failure and may thereafter recover such liquidated damages by adjustment to or withholding from any subsequent payment otherwise due under clauses 20.

# Defects

## At any time within the Defects Period the Authority may provide the Contractor with details of any work which has not been carried out, is incomplete or is defective, and the Contractor shall at its own cost carry out any necessary rectification work within a reasonable time of such notice. If it fails to do so, the Authority may employ other persons to carry out such works and recover any additional costs from the Contractor.

# Control of the Works

## The Authority may issue written instructions to the Contractor. The Contractor will comply with all such instructions without delay.

## The Authority may instruct that the Works Specification is varied. The Contractor shall comply with all such instructions. All such variations to the Works Specification shall be valued by reference to the Contract Price or, where no price is available, on a fair and reasonable basis.

## If the Contractor fails to comply with any instruction properly issued by the Authority, the Authority may after giving no less than five day's written notice employ other contractors to carry out any works specified in the instruction and recover the additional cost of so doing from the Contractor.

# Provision and removal of Equipment

## Unless otherwise stated the Contractor shall provide all the Equipment necessary for carrying out the Works.

## The Contractor shall not deliver any Equipment without obtaining prior written Approval.

## All Equipment brought onto the Site shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Site and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Site will remain the property of the Contractor.

## The Contractor shall maintain all items of Equipment within the Site in a safe, serviceable and clean condition.

## The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

### remove from the Site any Equipment that in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and

### replace such item with a suitable substitute item of Equipment.

## On completion of the Works, the Contractor shall remove the Equipment together with any other materials used by the Contractor to carry out the Works and shall leave the Site in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Site or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

Staffing

# Key Personnel

## The Parties have agreed to the appointment of the Key Personnel. The Contractor shall obtain the prior Approval of the Authority before removing or replacing any Key Personnel.

## The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor.

## The Contractor acknowledges that the Key Personnel are essential to the proper carrying out of the Works to the Authority. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

## The Authority may also require the Contractor to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

# Contractor's Staff

## The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Site:

### any member of the Staff; or

### any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

## The Contractor's Staff engaged at the Site shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Contractor from time to time for the conduct of personnel when at or within the boundaries of those Site.

## The Contractor warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Contractor at the Start Date and that it shall not employ or engage any person in the provision of the Works who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Works.

Site

# Licence to occupy site

## Any land or site made available from time to time to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or site as licensee and shall vacate the same on completion of the Works or termination of the Contract.

## The Contractor shall limit access to the land or Site to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Site as the Authority may reasonably request.

## Without prejudice to clause 13.2, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Site notified to it by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

## Where the Site (or part of it) is under the control of a third party landowner, the Contractor’s access to and use of the Site is subject to such licence conditions as the third party landowner shall specify and the Contractor shall comply with such conditions at all times when on the Site.

# Security of the site

## The Contractor shall be responsible for maintaining the security of the Site and all assets and information used in carrying out the Works. The Contractor shall comply with all reasonable security requirements of the Authority while on the Site and shall ensure that all Staff comply with such requirements.

## On request, the Authority shall:

### provide the Contractor copies of its written security procedures; and

### afford the Contractor an opportunity to inspect its physical security arrangements.

# Property

## Where the Authority issues Property to the Contractor, such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and at all times the Contractor shall possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

## The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five Working Days of receipt.

## The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

## The Contractor shall ensure the security of all the Property while in its possession, either on the Site or elsewhere during the supply of the Works, in accordance with the Authority's reasonable security requirements as required from time to time.

## The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within two Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

# Environmental requirements

## The Contractor shall, when working on the Site, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## The works are to be executed in line with the specification to ensure the site and surrounding areas are adequately protected to prevent pollution and or environmental damage to the ground, water sources, animal, reptilian, fish and bird species.

# Health and safety

## The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which it is aware of at the Site and which may affect the Contractor in the performance of its obligations under the Contract.

## While on the Site, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

## The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract at the Site where that incident causes any personal injury or damage to property which could give rise to personal injury.

## The Contractor shall comply with the requirements of the Health and Safety at Work, etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Site in the performance of its obligations under the Contract.

## The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work, etc. Act 1974) is made available to the Authority on request.

Payment and Contract Price

# Contract Price

## In consideration of the Contractor carrying out the Works and performing its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause 20.

## The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Works carried out in accordance with the Contract.

# Payment and VAT

## The Contractor shall ensure that each invoice is submitted in accordance with the payment profile set out in the Award Letter and contains all appropriate references and a detailed breakdown of the Works carried out and that it is supported by any other documents reasonably required by the Authority to substantiate the invoice.

## Where the Contractor submits an invoice to the Authority in accordance with clause 20.1, the Authority will assess the amount due. The date on which payment becomes due is no later than seven (7) days after the Contractor submits an invoice.

## Subject to clause 20.3A below, the Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed. The final date for payment is 30 days after the date on which payment becomes due.

## 20.3A The Authority shall retain 10% of each amount due until the date on which the Contractor completes and hands over to the Authority the Health and Safety File (as set out in the Works Specification).

## If the Authority intends to pay less than the invoiced sum it notifies the Contractor not later than seven days (the prescribed period) before the final date for payment by stating the amount which the Authority considers is due and the basis for calculating this amount. In such circumstances, the Contractor shall issue a replacement invoice for the revised amount.

## Where the Authority fails to comply with clause 20.2, the invoice shall be regarded as valid and undisputed seven (7) days after the date on which it is received by the Authority.

## Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

### provisions having the same effect as clause 20.2 to clause 20.4 of this Contract; and

### a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 20.2 to clause 20.4 of this Contract.

In this clause 20.6, "Sub-Contract" means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

## The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

## The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 20.8 shall be paid by the Contractor to the Authority not less than five Working Days before the date on which the tax or other liability is payable by the Authority.

## The Contractor shall not suspend the supply of the Works unless (i) the Contractor is entitled to terminate the Contract under *clause 38* for failure to pay undisputed sums of money or (ii) the Contractor is entitled to do so under the Housing Grants, Construction and Regeneration Act 1996.

# Recovery of sums due

## Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.

## Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

## The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court Award Letter requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

## All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

Statutory obligations and regulations

# CDM Regulations

## The Parties shall comply with the CDM Regulations.

## Without prejudice to the generality of clause 22.1 above, the Contractor shall:

### possess the requisite degree of competence and level of resources to meet its obligations under the CDM Regulations;

### ensure that all Sub-Contractors are made fully aware of their obligations under the CDM Regulations and are fully competent and are adequately resourced to meet those obligations;

### (where the Contractor is not the Principal Designer) at all times co-operate and assist the Principal Designer in the exercise of its duties under the CDM Regulations and supply all information relevant to the Works reasonably required in connection with it.

## Whether or not the Contractor is the CDM Principal Contractor, compliance by the Contractor with his duties under the regulations shall be at no cost to the Authority and shall not entitle the Contractor to any extension of time.

# Conflicts of interest

## The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Authority under the provisions of the Contract.

## The Contractor shall promptly notify the Authority (and provide full particulars to the Authority) if any conflict referred to in clause 23.1 above arises or is reasonably foreseeable.

## The Authority reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

# Discrimination

## The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

## The Contractor shall take all reasonable steps to secure the observance of clause 24 by all servants, employees or agents of the Contractor and all Contractors and Sub-contractors employed in the execution of the Contract.

Information

# Intellectual Property Rights

## The Contractor shall retain ownership of all Intellectual Property created by the Contractor or any Staff or Sub-Contractor of the Contractor:

### in the course of performing the Works; or

### exclusively for the purpose of performing the Works.

## The Contractor hereby grants, or shall procure the direct grant, to the Authority of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Authority to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Authority provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement Contractor or other third party invited by the Authority to participate in a tendering process for the award of a contract to deliver replacement Works).

## The Contractor shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Works, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

Control of the contract

# Provision of information and meetings

## The Contractor shall provide all information which the Authority reasonably requests.

## The Contractor shall meet with the Authority at the time and location which the Authority reasonably requests.

# Remedies in the event of inadequate performance

## If the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 38, do any of the following:

### without terminating the Contract, itself carry out or procure the carrying out of all or part of the Works until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to carry out all or such part of the Works in accordance with the Contract;

### without terminating the whole of the Contract, terminate the Contract in respect of part of the Works only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself carry out or procure a third party to carry out such part of the Works; and/or

### charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Works by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Works and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Works.

## If the Contractor fails to carry out any of the Works in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within twenty (20) Working Days of the Authority's instructions or such other period of time as the Authority may direct.

## If the Contractor:

### fails to comply with clause 27.2 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

### persistently fails to comply with clause 27.2 above,

the Authority may terminate the Contract with immediate effect by giving the Contractor notice in writing.

# Rights and remedies

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

# Transfer and sub-contracting

## The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

## Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the Contract where:

### the specific change in contractor was provided for in the procurement process for the award of the Contract;

### there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

## The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

## Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.

## The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

### any Contracting Authority; or

### any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

# Waiver

## A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

## A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

# The Contracts (Rights of Third Parties) Act 1999

## Except as expressly provided elsewhere in this Contract, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## No term of this Contract is intended to confer a benefit on or to be enforceable by any person who is not a party to this Contract.

# Severance

## If any provision or part-provision of this Contract 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 Contract.

## If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Liabilities

# Liability, indemnity and insurance

## Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

### death or personal injury caused by its negligence;

### Fraud or fraudulent misrepresentation;

### any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Works Act 1982;

### any claim under clause 20.8;

### any claim under clause 35; or

### any claim under the indemnity in clause 25.3.

## Subject to clause 33.3 and clause 33.4, the Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the carrying out, or late or purported carrying out, of the Works or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Site, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

## Subject always to clause 33.1 and clause 33.4, the liability of either Party for Defaults shall be subject to the following financial limits:

### the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £50,000.00; and

### the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of 150% of the Contract Price payable by the Authority to the Contractor in the Contract Year in which the liability arises.

## Subject to clause 33.1, in no event shall either Party be liable to the other for any indirect or consequential loss or damage.

## The Authority may, among other things, recover as a direct loss:

### any additional operational and/or administrative expenses arising from the Contractor's Default;

### any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Contractor's Default; and

### the additional cost of any replacement Works following termination of the Contract as a result of a Default by the Contractor.

## Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

# Insurances

## The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

### public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;

### employer's liability insurance with a limit of indemnity of not less than £5,000,000 in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

### professional indemnity insurance with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Works hold and maintain appropriate cover; and/or

### product liability insurance with a limit of indemnity of not less than £2,000,000 in relation to any one claim or series of claims.

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

## The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

## The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

## The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

# Taxation, National Insurance and employment liability

The Parties acknowledge and agree that the Contract constitutes a contract for the carrying out of Works and not a contract of employment. The Contractor shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether before or after termination or expiry of the Contract.

# Warranties and representations

The Contractor warrants and represents that:

### it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

### the Contract is executed by a duly authorised representative of the Contractor;

### in entering the Contract it has not committed any Prohibited Act;

### as at the date of this Contract, all information, statements and representations contained in the Tender are true, accurate and not misleading except as may have been specifically disclosed in writing to the Authority before execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

### no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

### it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

### no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

### it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

### the Works shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

Default, disruption and termination

# Termination on insolvency and change of control

## Without affecting any other right or remedy available to it, the Authority may terminate this Contract with immediate effect by giving written notice to the Contractor if:

### the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

### the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

### a petition is filed, a notice is given, a resolution is passed, or an Award Letter is made, for or in connection with the winding up of the Contractor (being a company);

### an application is made to court, or an Award Letter is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);

### the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;

### a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;

### a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within [14] days;

### any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 37.1(a) to clause 37.1(g) (inclusive); or

### the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (Change of Control). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

### being notified that a Change of Control has occurred; or

### where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

# Termination on Default

## The Authority may terminate the Contract (or part of the Contract) by giving written notice to the Contractor with immediate effect if the Contractor commits a material breach and if:

### the Contractor has not remedied the material breach to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

### the material breach is not, in the opinion of the Authority, capable of remedy.

## The Authority may terminate the Contract by giving written notice to the Contractor with immediate effect if:

### the Contractor repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

### if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;

### any warranty given by the Contractor in clause 36 of this Contract is found to be untrue or misleading.

## If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 21.

# Consequences of termination or expiry

## Where the Authority terminates the Contract under clause 38 and then makes other arrangements for the carrying out of Works, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 38, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

## Except as otherwise expressly provided in the Contract:

### termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

### termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clause 19, clause 20, clause 21, clause 22, clause 25, clause 28, clause 33, clause 34, clause 35, clause 39, clause 41, and clause 45.

# Disruption

## The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.

## The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

## In the event of industrial action by the Staff, the Contractor shall seek the Authority's Approval to its proposals for the continuance of the carrying out of the Works in accordance with its obligations under the Contract.

## If the Contractor's proposals referred to in clause 40.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may:

### require the Contractor to provide alternative proposals; or

### carry out the Works itself and recover from the Contractor the additional costs incurred in the process.

## Nothing in this clause shall release the Contractor from the proper performance of its obligations under the Contract.

# Recovery on termination

## On the termination of the Contract for any reason, the Contractor shall:

### immediately return to the Authority all Confidential Information, Personal Data and Authority's Intellectual Property in its possession or in the possession or under the control of any permitted contractors or Sub-Contractors, which was obtained or produced in the course of carrying out the Works;

### immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under clause 6. Such property shall be handed back in good working Award Letter (allowance shall be made for reasonable wear and tear);

### assist and co-operate with the Authority to ensure an orderly, transition of the carrying out of the Works to any Replacement Contractor and/or the completion of any work in progress; and

### promptly provide all information concerning the carrying out of the Works which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Works have been carried out or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

## If the Contractor fails to comply with clause 41.1(a) and clause 41.1(b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted Contractors or Sub-Contractors where any such items may be held.

## Where the Contract is terminated due to the Contractor's Default, the Contractor shall provide all assistance under clause 41.1(c) and clause 41.1(d) free of charge.

# Force majeure

## The Authority may terminate the Contract (or part of the Contract) by giving written notice to the Contractor with immediate effect if a Force Majeure event occurs which will result in a delay to completion of more than 13 weeks.

# Entire agreement

## This Contract 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.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract, provided that nothing in this clause 43 shall operate to exclude any liability for fraud.

# Notices

## Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

## Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) [or e-mail]. Such letters shall be addressed to the other Party in the manner referred to in clause 44.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or [four hours in the case of e-mail], or sooner where the other Party acknowledges receipt of such letters, [or e-mail].

## For the purposes of clause 44.2 the address of each Party shall be:

### for the Authority: the address set out in the Award Letter.

### for the Contractor: the address set out in the Award Letter.

## Either Party may change its address for service by serving a notice in accordance with this clause.

# Governing law and jurisdiction

## This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.