

APPENDIX 10

CONTRACT CONDITIONS

1. Performance of Contract

- a. Works shall only be commenced upon the Authority issuing an official purchase order form for such Works as may be identified in that official purchase order for and only to the extent of such Works.
- b. The Authority need not issue official purchase orders for the entirety of the Works and at its discretion may omit or change the Works or the period during which they are to be carried out. The Authority and the Contractor shall endeavour to agree in writing a revised Price but failing agreement the Contract manager shall determine the revised Price on a fair and reasonable basis using and relevant prices or rates in the Contractor's Tender Return allowing to the Contractor any direct loss or expense reasonably and properly incurred in wasted time or goods, paid for in advance.
- c. The Contractor agrees that at all times it will carry out the Works and perform the Contract in compliance with the following conditions:
 - i. The Contractor shall perform his obligations and functions in compliance with these Conditions (and any authorised modifications) and carry out the Works in a manner consistent with the Contract Documents and to the entire satisfaction of the Authority and in any event with all the reasonable skill care and diligence that would be expected of a qualified competent and experienced person undertaking the Works.
 - ii. The Contractor shall notify the Authority 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.
 - iii. The Contractor shall be responsible for any loss or damage caused by the Contractor's negligence or lack of care.
 - iv. Any damage or loss which may occur during the Contract in relation to the Works 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 theft, spoiling, decay, waste, wind, rain or fire shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Authority.
 - v. Where the Contractor has submitted method statements as part of the Contractor's Tender Return and these have been agreed in writing by the Authority ("the Agreed Method Statements") it shall ensure that the Works are undertaken in complete compliance with such method statements and that such method statements are appropriately reviewed, updated and revised from time to time to take account of the work and any changes that have occurred and submitted to the Authority for approval. Upon such approval such reviewed method statements shall be substituted for the previous method statement as if they had formed part of the Agreed Method Statements.
 - vi. Following completion of the Works the Contractor shall promptly, with due diligence, at its entire cost and to the Contract manager's satisfaction repair and restore any loss injury or damage to the site and to the Works arising during the carrying out of the Works, for the prompt reinstatement of the Works and for the removal and disposal of debris.

2. Signs

- a. The Contractor shall not affix signs, notices or advertisements on Site without the prior written approval of the Authority

3. Employees

- a. The Contractor shall not engage, employ or cause to be employed 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 Contract manager 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 in or about the performance of the Contract or any part for any reason (provided the Authority shall not act vexatiously). The Authority shall within 3 working days 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 Contract manager.
- 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 Contract Manager shall have the right at any time to interview any member of the Contractor's staff in connection with the performance of the Contract. The Contract Manager shall also be entitled to request any information relating to the performance of the Contract. Any information so requested shall be supplied by the Contractor forthwith.
- 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 thereof.

4. Vehicles and Equipment

- a. The Contractor shall at all times at its own cost provide in good and serviceable repair, such equipment, vehicles and materials as is necessary for the proper performance of the Contract and execution of the Works and shall at all times be fully responsible for licensing fees, taxes and insurances required in connection with such equipment.
- b. The Contractor shall notify the Authority of the equipment it is to use and obtain the Authority's approval to any change.
- c. No wheeled equipment will be allowed on soft, wet or environmentally sensitive locations without the prior approval of the Authority.
- d. Any damage arising from any breach of this **Clause 4** 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 Authority.
- e. The Contractor shall ensure that all highways or other rights of way in the vicinity of the Works that the Contractor uses are kept clean of mud and other debris caused by its equipment.

5. Environmental Provisions

- a. All chemicals will need to fully comply with the Control of Substances Hazardous to Health Regulations 1992 (COSHH).
- b. The Contractor must comply with the Control of Pollution (Oil Storage) (England) Regulations 2001.
- c. All waste disposal must comply with the Agricultural Waste Regulations 2006.

- d. Plants and animals protected under the Schedules of the Wildlife and Countryside Act 1981 and other Acts are not to be harmed or their habitat damaged. Nesting birds are not to be disturbed and are to be reported immediately to the Authority.
- e. Any public complaints must be immediately reported to the Authority and the Contractor shall at its own cost promptly deal with any requests arising from such complaints.
- f. The Site must be left clean and tidy at all times.
- g. Dogs and smoking are not permitted on Site.
- h. The Contractor shall make arrangement for the storage of fuel and other hazardous materials to the satisfaction of the Authority. The Contractor must ensure that no spillage takes place on Site and must immediately inform the Authority of any spillage and take such action appropriate to remedy such breach and will make good the area at the Contractor's expense to the satisfaction of the Authority.
- i. 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 the Site. The Contractor shall indemnify the Authority against any costs or damages or claims related to this liability.
- j. The Contractor must comply with all relevant environmental legislation.

6. **British Standards**

- a. Except where specified to the contrary in the Contract Documents all materials are to comply with the latest British Standard Specification and shall be fit for purpose.

7. **Variation of Contract**

- a. No variation of Contract shall be valid or have any effect unless it is agreed in writing and signed by the Authority. No other variations to the Contract shall be accepted or paid by the Authority.

8. **Payment**

- a. On completion of the Works 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 Authority) the Contractor may submit to an invoice ('Invoice') for the sum due to him in respect of that Order.
- b. Subject to **Clause 8(a)**, the invoice shall be paid within thirty (30) days of its receipt unless disputed within 14 days.
- c. The Contractor shall be entitled to an interim payment on the date occurring 3 calendar months after the Commencement of Works in the sum equal to the amount that the Contract manager considers to be equal to the percentage stated in the Contract Particulars of (a) Works properly executed and (b) material and goods reasonably and properly brought onto site for the purpose of the Works and that are adequately protected against weather and other casualties, less any amounts already paid. The contract manager must issue an [interim certificate](#) within five calendar days of the [due date](#) whether or not the [Contractor](#) has issued an interim payment application. The certified amount shall be paid in accordance with clause 8a and 8b.
- d. If any defects, shrinkages or other faults to the Works appear within the Defects Liability Period due to materials, goods or workmanship not in accordance with this Contract then the Contract Manager shall, not later than 14 days after the expiry of the Defects Liability Period notify the Contractor who shall make good such defects, shrinkages or other faults entirely at his own cost unless the Contract manager shall otherwise instruct.

9. **Value Added Tax**

- a. All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

10. Assignment

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract.
- b. The Contractor shall not assign the Contract or any part or it or any benefit or interest within in (including subcontracting) without the written consent of the Authority. Such consent does 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 as fully as if they were acts defects or neglects of the Contractor and the Contractor shall indemnify and keep indemnified the Authority from and against any costs claims demands and liabilities howsoever arising out of or in respect of any breach by any sub-contractor its agents servants or workmen.

11. 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 Construction (Design and Management) Regulations 2015 (“the CDM Regulations”) to the extent applicable to the Project.
- b. Without limitation, in accordance with the CDM Regulations:-
 - i. The Authority is the client for the purposes of the CDM Regulations and has provided Pre-construction information to the Contractor as part of the Invitation to Tender;
 - ii. The Contractor is appointed as Principal Contractor and Principal Designer for the purpose of the CDM Regulations and assumes the duties allocated to those roles;
 - iii. The Contractor’s acknowledges that its duty to plan, manage, monitor and co-ordinate health and safety in the pre-construction phase of the Works.and 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;
 - iv. The Contractor shall ensure that a copy of the Health and Safety file (as required by Regulation 12 of the CDM Regulations) is received by the Authority before any works under the Contract is commenced;
 - v. The Contractor must ensure that a construction phase plan (as envisaged by Regulation 12 of the CDM Regulations) for the Works is prepared and a copy passed to the Authority before the Works Commencement Date;
 - vi. The Contractor shall promptly provide (and shall ensure that any sub-contractor through the Contractor provides) such information as is required for the preparation of the health and safety file;
 - vii. The Contractor shall ensure that the health and safety file and the construction phase plan is appropriately reviewed, updated and revised from time to time to take account of the work and any changes that have occurred and shall promptly provide a copy to the Authority.
- 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 Contract manager of their names and contact details.

- e. The Contractor shall notify the Contract manager 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 Contract manager. Any instructions given to this representative shall be deemed to have been issued to the Contractor.

12. Health and Safety

- a. The Contractor will be required to comply with the Health and Safety at Work etc Act 1974 and all other regulations made under the Act and all other legislation and regulations relevant to the performance of the Contract.
- b. Notwithstanding the provisions of Section 2 of the Health and Safety at Work etc. Act 1974 the Contractor shall maintain a written health and safety policy statement. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statement.
- c. Site safety considerations:
 - i. No representation is made by the Authority as to the existence of ground contamination or stability and the Contractor should make its own enquiries in that regard.
 - ii. The Contractor is to liaise with all relevant statutory authorities as to the location of any services that may affect completion of the works and shall follow HSE: HS G47 guidance note.

13. Agency

- a. The Contractor is not and shall not in any circumstance hold itself out as being the agent of the Authority.

14. 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, claims (including any claim for infringement of copyright), 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 the Authority or to any third party and against all losses, costs, expenses, liabilities, damages, claims, demands or causes of action resulting therefrom;

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 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.

15. Insurance

- a. The Contractor shall at all times 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:
- b. The Contractor shall at all times from and including the commencement of the Services maintain in force with reputable insurers or underwriters a policy of insurance to cover the liability of the Consultant in respect of
 - i. public and employers liability in the sum of at least £10,000,000 per individual claim, and
 - ii. the Works of at least £1,000,000 per individual claim
 and will provide satisfactory evidence of insurance against such claims to the Authority.
- c. 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.
- d. The Contractor shall also maintain public liability insurance arising out of or in connection with any matter involving or relating to the Works.
- e. The Contractor shall, prior to the commencement of the Works supply the Authority with copies of all insurance policies, cover notes, premium receipts.
- f. In the event that the Contractor is in breach of this **Clause 15** the Authority shall be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

16. 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 Agreement complies with this **Clause 16**;
 - v. it will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this **Clause 16**;
 - vi. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;
 - 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 16** 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 17**.

17. 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 perform the obligations under **Clause 1** of this Section;
 - ii. Any 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 3 consecutive days;
 - iv. The Contractor being treated as insolvent.
- b. A Termination Notice shall be in writing and may be given by 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 immediately cease to perform of the Works;
 - ii. 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 completing the remainder of the Works.
 - 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 to the Authority all sums due under this Contract.

18. Notices

- a. Notices should be served upon the Authority for the attention of the Head of Law, Aldern Aldern House, Baslow Road, Bakewell, Derbyshire DE45 1AE.

19. 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.

20. Observation of Statutory Requirements

- a. 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.

21. Equality

- a. As a local authority the PDNPA 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 statutory responsibility is outlined in its Equality Policy (available on the Authority's website). Contractors are expected to work to the Authority's high standards of equality and inclusivity.

22. **Warranty**

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

23. **Freedom of Information Act 2000**

- 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 Transparency 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 Transparency 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.

24. **Sufficiency of information**

The Contractor acknowledges that the Authority does not warrant the accuracy or completeness of any data or information provided by the Authority concerning the sites or the vicinity of the site and acknowledges that he will not have any claim against the Authority based on the accuracy or completeness of such data or information

25. **General Data Protection Regulation/ Data Management**

For the purposes of this condition 25

The "controller" shall mean the Authority and the Contractor is the "processor"

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Subject, Personal Data, Personal Data Breach take the meaning given in the GDPR.

Data Loss Event shall mean any event that results, or may result, in unauthorised access to Personal Data held by the processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data and "Subject Access" shall be interpreted accordingly

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

In processing any Personal Data in connection with its obligation under this Contract the Contractor shall only process Personal Data

- i. for the purposes of complying with its obligations under this Contract

- ii. in accordance with the Contract and
- iii. in compliance with the requirements of the GDPR.
- iv. only act on the written instructions of the controller;
- v. ensuring that people processing the Data have given written commitments as to confidentiality and not to process the Data except in accordance with the this clause;.
- vi. taking appropriate measures to ensure the security of processing and in particular implements technical and organisational measures to maintain a level of security of the Data appropriate to the risk presented by processing
- vii. only engaging sub-processors with the prior consent of the controller and under a written contract; subcontract which involves the processing of Data which includes the same requirements for Data processing to those in this Contract. Further sub subcontracting which involves the processing of Data is not permitted without the prior written consent of the controller.

26. The Contractor shall

26.1 assist the controller assists the controller by appropriate technical and organisational measures for the fulfilment of the controller's obligation under the GDPR and in particular in providing Subject Access and allowing data subjects to exercise their rights under the GDPR;

26.2 assist the controller in meeting its GDPR obligations in relation to the security of processing, the notification of Personal Data Breaches and data protection impact assessments;

26.3 delete or return all Personal Data to the controller as requested at the end of the contract;

26.4 make available to the controller information necessary to demonstrate compliance with the requirements for processing the Personal Data

26.5 submit to audits and inspections and provide the controller with whatever information it needs to ensure that the controller and processor are meeting their obligations in respect of Article 28 of the GDPR,

26.6 If instructed by the controller, to assist the controller to ensure compliance with its obligations under the GDPR and

26.7 tell the controller immediately if it is asked to do something infringing the GDPR or other Data Protection Law [of the EU or a member state].

27. 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.