

Appendix 5

Terms and conditions (Supplies)

1. Definitions and interpretation

1.1. 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

'Contract Documents' means the Invitation to Tender (including all Appendices) the Tender Return, the Specification and the Conditions

'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 any equivalent) (if applicable)

'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 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 these Terms and Conditions and the Detailed Conditions

'Contract' means the Form of Contract to be signed and completed by the Parties

'Contract Commencement Date' means the date that the delivery of the Supply is to commence as set out in the Contract Particulars

'Contract Completion Date' means the date on which the Nominated Officer specifies in writing to the Contractor that the Supply of the Material has been completed to its satisfaction in accordance with these Conditions

'Contract Period' means the period set out in the Contract

'Contractor' means the Tenderer whose tender has been accepted by the Authority

'CROW' means the Countryside and Rights of Way Act 2000

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

'Delivery Site' means those areas, if any, 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, if any, to which the Materials or part are to be sourced in accordance with the Specification and (if applicable) identified on the Location Maps

'Delivery' means the delivery of the Material in the manner set out in the Contract Specification (if applicable)

'Detailed Conditions' means the conditions contained in the Invitation to Tender **(if any)**

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

‘Environmental Law’ means all laws including common law statute by-laws 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 in connection with the Supply

‘Form of Tender’ means the tender return form contained in the Invitation to Tender and completed by the Contractor

‘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 supply and delivery of the Materials, fire, earthquake, epidemic, pandemic, nuclear disaster, act of terrorism or other natural physical disaster

‘Form of Contract’ means the form of Contract 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 supply of the Material

‘Itemised Costs’ means the costs for the supply of the Material itemised by the Contractor in the Form of Tender (if requested)

‘Landowner’ means those persons who own the freehold or leasehold title to the land on which the Material or part is to be Delivered (independent of any grazing or other rights (if any))

‘Location Maps’ means the maps contained or referred to in the Invitation to Tender

‘Lift Site’ means those areas, if any, to which the Materials or part are to be airlifted as more particularly described in the Specification and (if applicable) identified on the Location Maps

‘Material’ means all materials described in the Specification for supply and delivery by the Contractor

‘Method Statement’ means a statement setting out the proposed methods for the Supply 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 Materials made pursuant to these Standard Conditions

‘Party’ means a party to this Contract (and shall include the plural if applicable)

‘Price’ means the price set out in the Contract Particulars

‘Project’ means the project as set out in the Project Objectives (if any)

‘Project Objectives’ means the objectives as set out in the Invitation to Tender (if any)

‘Project Progress Report’ means a report provided by the Contractor at the request of the Nominated Officer detailing the progress of the supply of the Materials

‘Purchase Order’ means the Purchase Order form issued by the Nominated Officer in connection with the supply

‘Regulatory Authority’ means the Environment Agency, local authority or any other government department or public body

‘RAMS’ means risk assessment and method statement

'RIDBOR' 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 Supply (if requested in the Invitation to Tender)

'Schedule of Rates' means the rates for the supply of the Material contained in the Itemised Costs (if any)

'Sites' means the sites used in connection with this Contract including the Delivery Site/Donor Site/ Drop Site/Lift Site/Storage Site (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 of the Materials set out in the Invitation to Tender

'Storage Site' means the location in which the Materials are to be stored in accordance with the Specification (if applicable)

'Supply Commencement Date' means the date of the first Purchase Order (if any)

'Supply Programme' means the programme for the supply of the Material provided by the Tenderer in the Tender and forming part of the Tender Documentation if requested in the Invitation to Tender

'Target Completion Date' means the date targeted for completion of the supply of the Materials as set out in the Contract Particulars (if any)

'Tender' means the tender submitted by the Tenderer and shall include the term "Tender Return" and the Form of 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 increases the potential for an accident

'User' means those persons granted rights over the land on which the Material or part is to be Delivered (if any) including (but not limited to) shooting and grazing rights

'Waste Material' means all packaging, bags, metal tapes, plastic and all other material and rubbish associated with or produced during the course of the Supply (if applicable)

1.2 Interpretation

- a. 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
- b. 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.
- c. 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.
- d. 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
- e. 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.

- f. 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.

2. Performance of Contract

- a. The Contractor agrees that at all times it will supply the Materials 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 supply the Material 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 supply of the Materials;
 - ii. The Contractor shall notify the Authority as soon as practicable and in any event within 24 hours if the Contractor is unable to supply the whole or any part of the Materials 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 supply of the Materials and in particular any loss or damage caused by the Contractor's negligence or lack of care shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Authority.
 - v. The Materials shall be fit for purpose;

3. Employees

- a. The Contractor shall not engage or 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 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. 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
- c. 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.
- d. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.
- 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. Vehicles, Equipment and Machinery

- 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 to the Authority's satisfaction.
- 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. 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 use no other Equipment and Machinery other than that stated in the Tender 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 delivery (if applicable) are kept clean of mud and other debris.

5. Environmental Provisions

- a. The performance of this Contract 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.

- b. 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).
- c. Plants and animals protected under the Schedules of the Wildlife and Countryside Act 1981 and other statutes are not to be harmed or their habitat damaged.
- d. 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).
- e. Site(s) must be left clean and tidy at all times.
- f. Dogs and smoking are not permitted on Site(s).
- g. 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 Contract Completion Date, whichever is soonest.
- h. 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.
- i. Machinery and Equipment movement on the Sites should be kept to the minimum that might reasonably be expected to supply the Materials. Equipment access and egress routes must be agreed with the Nominated Officer prior to the Contract Commencement Date. Method Statements must state types of Machinery and Equipment to be used.
- j. The Contractor shall take all precautions to ensure that no pollution arises from the supply of the Materials 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.
- k. 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).
- l. 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.

6. 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 (if required).
- b. 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 any RAMS.
- d. The Contractor must take the lead in ensuring the health and safety of all those involved in the Contract at the Sites.
- e. 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.
- f. 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.
- g. 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.
- h. 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).
- i. 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>.
- j. 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.
- k. The Contractor must be aware that the 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.
- l. The Contractor shall have regard to the Authority's health and safety policy and safe working practices when preparing its own statements.

7. British Standards

- a. Except where specified to the contrary in these Conditions all Materials are to comply with the latest British Standard Specification or equivalent with supporting documentation to prove that the Materials offer guarantees of safety, standards of reliability and fitness for purpose equivalent to or in excess of the relevant British Standard Specification. All Materials must be fit for purpose.
- b. In the event of the Nominated Officer (whose decision shall be final) not being satisfied that the Materials proposed 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 hereinafter specified to the contrary all workmanship is to comply with the latest British Standard Code of Practice.

8. Project Progress Report

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

9. 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.

10. 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. Provided that the Invoice is valid and not disputed, the Invoice shall be paid within thirty (30) days of its receipt in accordance with Section 68 of the Procurement Act 2023.

11. Value Added Tax

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.

12. CDM (if applicable)

- a. The Authority and the Contractor acknowledge that they are aware and undertake to the other that in relation to the Contract and the Sites he will duly comply with the CDM Regulations to the extent applicable to the Project.

13. Insurance

- a. The Contractor shall at all times from and including the Contract 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 employees of the Contractor,
2. To the public and any other person (including for the avoidance of doubt a Landowner or User)
3. In respect of the replacement of the Material.

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 also maintain public liability insurance arising out of or in connection with any matter involving or relating to the delivery of the Materials in the sums set out above.
- d. The Contractor shall, prior to the Contract Commencement Date or Contract Date (whichever is the earlier) and at such other times as the Nominated Officer may require, supply the Nominated Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with this Clause.
- e. In the event that the Contractor is in breach of this Clause the Authority shall be at liberty to obtain such insurance as is required at the cost of the Contractor (payable on demand).

14. Agency

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

15. Liability of the Contractor

- a. The Contractor 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 from it;

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.

- b. 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 supply of the Material and against all costs and proceedings in respect of

any such claim. The Contractor shall also make good any loss or damage occasioned to the property of the Authority by the acts or defaults of the Contractor or his sub-contractors and reimburse the Authority for any loss suffered as a result.

16. 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 Supply 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.

17. Ownership of Materials

- a. Acceptance of Materials by the Authority does not constitute confirmation by the Authority that the Materials are as required in the Specification or fit for purpose.
- b. Upon payment of the relevant invoice for the Materials, the Materials shall become the property of the Authority.
- c. Notwithstanding ownership of the Materials by the Authority, any damage or loss which may occur during the Contract Period in relation to the Materials or Equipment and Machinery on or before the Contract Completion Date or to any materials or property whatsoever of the Authority which may at any time for the purpose of any delivery (if applicable) be in the custody or use of the Contractor or sub-contractor which shall arise from the negligence of the Contractor or theft, spoiling, decay, waste, wind, rain or fire shall be the responsibility of the Contractor and the Contractor shall immediately be made good by the Contractor at the Contractor's cost to the satisfaction of the Nominated Officer.

18. Defects Liability Provisions

- a. The Authority shall have the right at any time to inspect the Supply and the progress of the Delivery 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 such do not constitute Contract Variations).

- c. Upon the completion of the Supply the Contractor shall notify the Nominated Officer and the Nominated Officer shall in its absolute discretion notify that the Material (whether in whole or part) is satisfactory (“the Completion Certificate”).
- d. In the event that the Nominated Officer cannot so notify the Contractor shall take such action as shall be agreed with the Nominated Officer (including but not limited the removal and replacement of such Material) to enable the Nominated Officer to confirm that the whole of the Material has been Supplied to its entire satisfaction.

19. 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)**.

20. Termination

- a. The Authority shall be entitled forthwith 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, Provided That an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition;
- 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 the Project.
- 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 immediately cease to Supply the Material;
 - 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:
 - 1. all losses damages and costs (including professional costs) and expenses incurred or suffered by the Authority from such termination; and
 - 2. 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 to the extent that such costs exceed such sums as would have been lawfully payable to the Contractor for the Supply of the Material. 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 Supply of the Material.
 - 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.

21. 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 Supply the Material

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

22. Assignment

- a. The Authority shall be entitled to assign or transfer the benefit of the Contract or any part of it 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. As a condition of consent (but without any obligation to consent), the Authority may impose such conditions as it may require. Any assignment occurring as a result of any internal reconstruction of the Contractor that is a limited company shall not require consent Provided That the Authority shall be given prior written notice.
- c. The Contractor shall not sub-let the whole or any part of the Supply without the written consent of the Nominated Officer. As a condition of consent (but without any obligation to consent), the Authority may impose such conditions as it may require. 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 as fully as if they were acts defects or neglects of the Contractor, its agents, servants or workmen 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.

23. 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.

**Authority Solicitor
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.

24. Arbitration

- a. All disputes under this Contract shall be settled by arbitration under the Arbitration Act 1996 (or any statutory modification or re-enactment of it 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 hereto.
 - c. Unless the Contract shall have already been determined or abandoned the Contractor shall in every case continue to proceed with the Supply 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.

25. 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 Supply of the Material including (but not limited to) compliance with any obligations that may be imposed upon the Authority resulting from the Supply (where the same are within the power and control of the Contractor) and the Contractor shall indemnify the Authority accordingly.

26. Stamp Duty and Professional Fees

Each party shall bear its own legal and other fees in relation to the preparation and submission of the Contract.

27. 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 of it or the right of the Authority to enforce any provision in accordance with these conditions.

28. Whole Contract

The Contract Documents 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.

29. Warranty

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

30. Rights and Duties Reserved

- a. 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.

31. 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 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) to the disclosing Party.
- e. Data Protection. 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 comply with the security measures required by the Data Protection Act 2018.
 - iii. The contractor shall, upon request, demonstrate to the reasonable satisfaction of the purchaser the security and related organisational measures operated by the supplier and as applied to the contract.
 - iv. The contractor shall ensure the written agreement of any sub-contractor to observe the same obligations to the purchaser as outlined above.

32. 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 and 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

33. 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. The Authority shall have the absolute discretion to use the Contractor, another contractor, its own employees or any third party to Supply the Material or any part of them at any time during the Contract.
- c. Notwithstanding the Contractor's obligations to maintain a capability to Supply the Material 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 Supply at any time during the Contract Period.

34. Sub-contracting

- a. The Authority's prior written approval must be obtained before any Supply of the Material (in whole or in part) 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 Contractor will nonetheless remain primarily liable for Supplying the Material.

35. Ancient Monuments and Archaeological Areas

- a. 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 Supply 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 1979Act.

36. Conditions

- a. 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.

37. Communications and marketing

- a. Any supplies for the Authority may be included in promotional material released by the Authority.
- b. By accepting an Authority Purchase Order the Contractor is consenting to use their company image, branding and equipment for the use of publicity and marketing by the Authority.
- c. The Authority may include, but reserves the right not to, credit the Contractor in any publicity they release.
- d. The use of Contractor images does not include images of the faces of individual workers. Should any pictures of faces, or recognisable features of an individual, be included in an image which the Authority wishes to use then consent will be requested of the individual through the Contractor. If they refuse permission then these pictures will not be used.
- e. The consent given by this Clause refers to all forms of media including social media.
- f. The Contractor shall only be permitted to use images taken during any supplies if they adhere to the Moors for the Future Communications protocol. A copy of this protocol will be freely available on request from the Authority via the Nominated Officer. This is applicable for all forms of media, including social media. The protocol has different sections relating to the different types of publicity and media and for the avoidance of doubt referrals can be made to the MFFP communications manager.
- g. Any unauthorised use of Authority works for the Contractors own publicity will assess for suitability shall be removed on request.

38. 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.

39. Liquidated Damages

- a. In the event that a delivery of Material requested pursuant to a Purchase Order Form has not been delivered on the date stated on the Purchase Order Form (save where the delay is caused by a Force Majeure Event or the negligence or omission of the Authority) the Contractor shall be liable to pay on demand to the Authority in liquidated damages such reasonable costs as the Authority may reasonably incur as a result of such delay whether in relation to this Contract or such other dependant contract where the delay has an adverse effect on the Project.