

FOL16/615: RESURFACING AND RECONFIGURATION OF TENNIS COURTS

SCHEDULE 2 – *EMPLOYER*’S CONTRACT DATA,

INCLUDING ADDITIONAL CONDITIONS OF CONTRACT

***Employer*’s Contract Data,** including amended and additional conditions of contract.

The *Employer* is

|  |  |  |
| --- | --- | --- |
| Name: | Secretary of State for Culture, Media and Sport represented, for the purposes of managing and administrating this contract, by The Royal Parks (TRP). | |
| Address: | The Royal Parks, The Old Police House, Hyde Park, London, W2 2UH | |
| Telephone: | 0300 061 2000 | |
| Fax: | 020 7402 3298 | |
| Initial email address: | [procurement@royalparks.gsi.gov.uk](mailto:procurement@royalparks.gsi.gov.uk) | |
| The *works* are: | Resurfacing and reconfiguration of the existing tennis courts within the tennis centres at Hyde Park and The Regent’s Park including the provision of Sports Lighting at Hyde Park. | |
| The contract reference is: | FOL16/615 | |
| The *site* is: | The area within identified within the Works Information and any other areas in the near vicinity that may need to be used for work included in this contract. | |
| The *starting date* is: | 6th February, 2017 | |
| The *Completion Date* is: | 31st March, 2017 | |
| The *period for reply* is: | 2 | Weeks |
| The *defects date* is: | 52 | weeks after Completion. |
| The *defects correction period* is: | 4 | Weeks |
| The *Delay damages* are: | N/A | per day |
| The *assessment day* is: | 28 | of each month |
| The *retention* is: | 5% (with 2.5% released at Practical Completion) | |
| The law of the contract is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales (UK). | | |

The Site Information is the documents titled:

* Schedule 3 - Site Information
* Schedules 4B and 4C – Lot-specific Works Information
* any documents and drawings referenced from the above document.

The Works Information is in the documents titled:

* Schedule 4A - Works Information;
* Schedules 4B and 4C – Lot-specific Works Information
* Schedule 4D – Works Information itemising quantity of work required

|  |  |
| --- | --- |
| The minimum amount of cover for the third insurance stated in the Insurance Table is: | £5,000,000 in respect of each claim, without limit to the number of claims for a period of 6 months following Completion of the whole of the *works* or earlier termination. |
|  |  |
| The minimum amount of cover for the fourth insurance stated in the Insurance Table is: | £5,000,000 in respect of each claim, without limit to the number of claims for a period of 6 months following Completion of the whole of the *works* or earlier termination. |
|  |  |
| The minimum amount of cover for failure of the *Contractor* to use the skill and care normally used by professionals providing a service similar to one described in the Works Information is: | £2,000,000 in respect of each claim, without limit to the number of claims for a period of 6 months following Completion of the whole of the *works* or earlier termination. |

The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract is limited to £10,000,000.

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) as amended by the Local Democracy, Economic Development and Construction Act (2009) does apply.

The name of the *Adjudicator* is to be agreed between the Parties based on the nature of the dispute and his or her availability to decide the dispute.

The *Adjudicator* nominating body, in case of a failure by the Parties to agree an *Adjudicator* is The Institution of Civil Engineers.

The *tribunal* is arbitration.

The arbitration procedure is the Institution of Civil Engineers Arbitration Procedure (1997).

The place where an arbitration would be held is London.

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the arbitration procedure does not state who selects an arbitrator is The Landscape Institute.

The conditions of contract are the **NEC3 Engineering and Construction Short Contract (April 2013)**

The additional conditions of contract to be added to the NEC3 ECSC are:

## Definitions

1.1 In this contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

“*Employer*” means the Secretary of State for Culture, Media and Sport*. T*RP is an executive agency of the Secretary of State for Culture, Media and Sport, so for the purposes of operating this contract shall act as if the *Employer. R*eferences to the *Employer* include ‘The Royal Parks’, ‘TRP’ and ‘TRP’s nominated representative’ (if a member of TRP’s staff) and/or his appointed agent (if an external organisation or individual).

“Commercially Sensitive Information” means the information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the *Employer*’s delegated representative in writing (prior to the contract date) which has been clearly marked as Commercially Sensitive Information comprised of information:

1. which is provided by the *Contractor* to the *Employer* in confidence for the period set out in that Schedule or notification; and/or
2. which constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

1. was public knowledge at the time of disclosure (otherwise than by breach of clause (Confidential Information));
2. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
4. is independently developed without access to the Confidential Information.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

“Default” means 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 this contract and in respect of which such Party is liable to the other.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

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

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“Good Industry Practice” means 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.

“Information” has the meaning given under section 84 of the FOIA.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the *Contractor* is bound to comply.

“Logo” means the logo as applied and developed for use by TRP in the Brand User Guidelines.

“Month” means calendar month.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization 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, and as may be further detailed in the Works Information.

“Receipt” means the physical or electronic arrival of the invoice at the address of the *Employer* or at any other address given by the *Employer* to the *Contractor* for the submission of invoices.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the *Employer* and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party provider appointed by the *Employer* to supply any services or works which are substantially similar to services or works included in this contract and which the *Employer* receives in substitution to Provide any of the Works following the expiry, termination or partial termination of this contract.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

"Relevant Convictions" means a conviction that is relevant to the nature of the *works* or relevant to the work of the *Employer.*

“Schedule” means a schedule attached to, and forming part of, this contract.

“Services” means the services and works to be supplied as specified in the Works Information.

“Staff” means all persons employed by the *Contractor* to perform its obligations under this contract together with the *Contractor*’s servants, agents, suppliers and sub-*Contractor*s used in the performance of its obligations under this contract.

“Staff Vetting Procedure” means the *Employer*’s procedures for the vetting of personnel and as advised to the *Contractor* by the *Employer*.

“Tender” means the document(s) submitted by the *Contractor* to the *Employer* in response to the *Employer*’s invitation to suppliers for formal offers to Provide the Works.

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994 and any subsequent amendments to this Act.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

## Interpretation

2.1 The interpretation and construction of this contract shall be subject to the following provisions:

1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
2. words importing the masculine include the feminine and the neuter;
3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
4. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
5. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
7. headings are included in this contract for ease of reference only and do not affect the interpretation or construction of the contract.
   1. Where information supplied by the *Contractor* has been incorporated into the Works Information and this creates an ambiguity or inconsistency between it and other Works Information then, in assessing a compensation event, it is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the *Employer*.

## Communications

## Insert new clause:

“13.3 Contract communications in accordance with clause 13.1 of the conditions of contract must be done using either:

* using a dedicated ‘cloud based’ NEC3 contract administration software if instructed by the *Employer* on award of the contract; or
* if not instructed by the *Employer*, using emails and the pro-formas in Appendix B of Schedule 4A of this contract*. T*hese pro-formas may be modified by agreement between the Parties.

All contract communications must be by one these routes, but not both.

## Early warning

## Insert new first bullet point into clause 16.1 of the conditions of contract:

“• affect health and safety whether in the construction or operation of the *works*,”

## Test and Inspections

## Insert new clauses in section 4 of the conditions of contract:

“44.1 The *Employer* and the *Contractor* provide materials, facilities and samples for the tests and inspections as stated in the Works Information.

44.2 The *Employer* and the *Contractor* copy the results of any tests and inspections to each other.”

## Title

## Add additional sentence to clause 70.2 of the conditions of contract:

“The *Contractor* is responsible for removal and disposal of such materials except as stated in the Works Information.”

## Title passes to the Employer at the former of when Plant and Materials are either:

* brought within the *site*.
* paid for by the *Employer.*

## If Plant and Materials are being paid for when they have not been brought within the site, then before payment for the Plants and Materials is made by the Employer to the Contractor, the Contractor must provide information to the Employer to show that:

* he is able to pass title to the *Employer.*
* the sum to be paid by the *Employer* reflects the amount to be paid out by the *Contractor*.

## If this contract identifies Plants and Materials for payment before they are brought within the site then:

* within one week of receipt of payment for the item; and
* as described in more detail in the Works Information

the *Contractor*:

* + provides a certificate vesting ownership with the *Employer;*
  + if the item is already in existence,
    - marks the Plant and Materials as having been paid for and now owned by the *Employer*; and
    - provides to the *Employer* photographs demonstrating proof of marking.

## Amendments to comply with the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the Acts).

## Delete clause 51.1 of the conditions of contract and replace with:

“Within one week of receiving notification of the amount which the *Employer* considers to be due, the *Contractor* submits an invoice for any change in the amount due since the previous payment due date*. I*f the *Employer* does not notify the *Contractor* of the amount which he considers due then, within one week following the start of the Prescribed Period, the *Contractor* submits an invoice for any change in the amount due since the previous payment due date.

Each payment is made within the latter of:

* four weeks after the next assessment day which follows receipt of an application for payment by the *Contractor*; or
* four weeks after receipt by the *Employer* of the *Contractor*’s invoice.”

## Delete clause 94.1 of the conditions of contract and insert the following:

“94.1 Definitions:

1. The payment due date for an application for payment by the *Contractor* is the assessment day which follows receipt of an application.
2. The final date for payment is five weeks after the payment due date.

94.2 The *Contractor*’s application for payment is the notice of payment specifying the sum that the *Contractor* considers to be due at the payment due date (the notified sum)*. T*he *Contractor*’s application states the basis on which the amount due is calculated and includes details of the calculation.

94.3 The following replaces clause 50.4 of the conditions of contract:

If the *Employer* intends to pay less than the notified sum, he notifies the *Contractor* of the amount which the *Employer* considers to be due not later than twenty one days (the prescribed period) before the final date for payment*. T*he *Employer*’s notification states the basis on which the amount is calculated and includes details of the calculation*. A* Party pays the notified sum unless he has notified his intention to pay less than the notified sum.

94.4 If the *Contractor* exercises his right under the Acts to suspend performance, it is a compensation event.”

## Adjudication

## The following clause replaces clause 93.3(1) of the conditions of contract:

A Party may issue to the other Party a notice of their intention to refer a dispute to adjudication at any time*. H*e refers the dispute to the *Adjudicator* within one week of the notice.

## The Adjudicator may in his decision allocate his fees and expenses between the Parties.

## The Adjudicator may, within five days of giving his decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

## If the Adjudicator’s decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.”

## Construction (Design and Management) Regulations 2015

## For the purposes of the CDM Regulations 2015:

* + - the *Employer* is the ‘Client’; and
    - the *Contractor* is the ‘Principal Contractor’ and warrants to the *Employer* that he is competent to fulfil the role in relation to the *works* and that he will allocate adequate resources to enable him to perform properly the duties required by this role.

## 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 Employer, 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 Employer under the provisions of this contract. The Contractor will disclose to the Employer full particulars of any such conflict of interest which may arise.

## If, in the reasonable opinion of the Employer, 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 Employer under the provisions of this contract, then the Employer may terminate the contract under clause 90.3, Reason 2, of the conditions of contract, except that the Employer may terminate with immediate effect*. T*he Employer may take other actions to minimise the impact of this breach*. T*he actions of the Employer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Employer.

## *Contractor*’s Staff

## On the *Employer*’s instruction, the *Contractor* provides a list of the names and addresses of all persons who may require admission in connection with this contract to the site, specifying the capacities in which they are concerned with this contract and giving such other particulars as the *Employer* may reasonably request.

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

## The *Contractor* shall comply with Staff Vetting Procedures in respect of all persons employed or engaged to provide the Works. The *Contractor* confirms that all persons employed or engaged by the *Contractor* were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

## The *Employer* may require the *Contractor* to ensure that any person employed to provide the Works has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures. The *Contractor* shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the *Contractor* to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in any way to Provide the Works.

## If the *Contractor* fails to comply with clause 11.1 within 1 Month of the date of the instruction and in the reasonable opinion of the *Employer*, such failure may be prejudicial to the interests of the Crown, then the *Employer* may terminate this contract under clause 90.3 of the conditions of contract, Reason 3, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the *Employer*.

## The decision of the *Employer* as to whether any person is to be refused access to the site and as to whether the *Contractor* has failed to comply with clause 11.1 shall be final and conclusive.

## Recovery of Sums Due

## Wherever under this 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 *Employer* in respect of any breach of contract), the *Employer* may unilaterally deduct that sum from the amount due. If an amount owed to the *Employer* is not paid to the *Employer* under this contract, then the *Employer* may deduct it from payments under any other agreement or contract with the *Employer*.

## Any overpayment by either Party, whether of the Prices for Work Done to Date 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 all payments due to the *Employer* without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the *Contractor* has a valid court order requiring an amount equal to such deduction to be paid by the *Employer* to the *Contractor*.

## All payments due shall be made in accordance with these conditions of contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## Prevention of Corruption

## The *Contractor* shall not offer or give, or agree to give, to the *Employer* or any other public body or any person employed by or on behalf of the *Employer* or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the *Employer* or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to this contract or any such contract.

## The *Contractor* warrants that it has not paid commission or agreed to pay commission to the *Employer* or any other public body or any person employed by or on behalf of the *Employer* or any other public body in connection with this contract.

## If the *Contractor*, its Staff or anyone acting on the *Contractor*’s behalf, engages in conduct prohibited by clauses 14.1 or 14.2, the *Employer* may:

1. terminate this contract and recover from the *Contractor* under clause 90.3 of the conditions of contract, reason 3, except that the *Employer* may terminate with immediate effect; or
2. recover in full from the *Contractor* any other loss sustained by the *Employer* in consequence of any breach of those clauses.

## Prevention of Fraud

## The *Contractor* shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the *Contractor* (including its shareholders, members, directors) in connection with the receipt of monies from the *Employer*.

## The *Contractor* shall notify the *Employer* immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

## If the *Contractor* or its Staff commits Fraud in relation to this or any other contract with the Crown (including the *Employer*), the *Employer* may:

1. terminate this contract under clause 90.3 of the conditions of contract, reason 3, except that the *Employer* may terminate with immediate effect; or
2. recover in full from the *Contractor* any other loss sustained by the *Employer* in consequence of any breach of this clause.

## Discrimination

## The *Contractor* shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the *Contractor* shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment the02reof.

## The *Contractor* shall take all reasonable steps to secure the observance of clause 16.1 in this Schedule by all Staff.

## The Contracts (Rights of Third Parties) Act 1999

## A person who is not a Party to this contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart outside of the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## Data Protection Act

## For the purposes of this Clause 18, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” have the meaning prescribed under the DPA.

## The *Contractor* (and shall ensure that all of its Staff) complies with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with this contract.

## Notwithstanding the general obligation in clause 18.2 of this Schedule, where the *Contractor* is processing Personal Data (as defined by the DPA) as a Data Processor for the *Employer*, the *Contractor*:

* 1. processes the Personnel Data only in accordance with instructions from the *Employer* (which may be specific instructions or instructions of a general nature) as set out in this contract or as otherwise notified by the *Employer*;
  2. complies with all applicable laws;
  3. process the Personal Data only to the extent; and in such manner as is necessary for the provision of the *Contractor*’s obligations under this contract or as is required by Law or any Regulatory Body;
  4. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  5. take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;
  6. obtain prior written consent from the *Employer* in order to transfer the Personal Data to any sub-*Contractor* in order to Provide the Works;
  7. not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the *Employer*;
  8. ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 18;
  9. ensure that none of the Staff and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the *Employer*;
  10. not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the *Employer* or in compliance with a legal obligation imposed upon the *Employer*; and
  11. notify the *Employer* within one week if it receives:

1. a request from a Data Subject to have access to that person’s Personal Data; or
2. a complaint or request relating to the *Employer*’s obligations under the DPA.

## The provision of this Clause 18 shall apply from the contract date and indefinitely after its expiry.

## Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989

## The *Contractor* shall comply with, and shall ensure that its Staff comply with, the provisions of:

1. the Official Secrets Acts 1911 to 1989; and
2. Section 182 of the Finance Act 1989.

## In the event that the *Contractor* or its Staff fail to comply with this clause, the *Employer* reserves the right to terminate this contract under clause 90.2 of the conditions of contract, Reason 3, except that the *Employer* may terminate with immediate effect.

## Confidential Information

## Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall:

1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

## Clause 20.1of these amendments shall not apply to the extent that:

1. such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 21 (Freedom of Information) of these additional conditions of contract;
2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
3. such information was obtained from a third party without obligation of confidentiality;
4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
5. it is independently developed without access to the other party's Confidential Information.

## The *Contractor* may only disclose the *Employer*’s Confidential Information to the Staff who are directly involved in providing the Works and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

## The *Contractor* shall not, and shall procure that the Staff do not, use any of the *Employer*’s Confidential Information received otherwise than for the purposes of this contract.

## If instructed by the *Employer*, the *Contractor* shall procure that those members of the Staff identified in the *Employer*’s instruction sign a confidentiality undertaking prior to commencing any work under this contract.

## Nothing in this contract shall prevent the *Employer* from disclosing the *Contractor*'s Confidential Information:

1. to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority:
2. to any *Contractor*, *Contractor* or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
3. for the purpose of the examination and certification of the *Employer*'s accounts; or
4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

## The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-*Contractor* to whom the *Contractor*'s Confidential Information is disclosed pursuant to clause 20.6 of these amendments is made aware of the *Employer*'s obligations of confidentiality.

## Nothing in this clause 20 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

## The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this contract is not Confidential Information. The *Employer* shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this contract, the *Contractor* hereby gives his consent for the *Employer* to publish the contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the contract, to the general public.

The *Employer* may consult with the *Contractor* to inform its decision regarding any redactions but the *Employer* shall have the final decision in its absolute discretion.

The *Contractor* shall assist and cooperate with the *Employer* to enable the *Employer* to publish this Contract.

## Freedom of Information

## The *Contractor* acknowledges that the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the *Employer* to enable the *Employer* to comply with its Information disclosure obligations.

## The *Contractor* shall and shall procure that any sub-*Contractor*s shall transfer to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:

1. provide the *Employer* with a copy of all Information in its possession, or power in the form that the *Employer* requires within one week of the *Employer*'s request; and
2. provide all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

## The *Employer* shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

## In no event shall the *Contractor* respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.

## The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the *Contractor* or the works in certain circumstances:

1. without consulting the *Contractor*; or
2. following consultation with the *Contractor* and having taken their views into account;

provided always that where 21.5(a) applies the *Employer* shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the *Contractor* advanced notice, or failing that, to draw the disclosure to the *Contractor*’s attention after any such disclosure.

## The *Contractor* ensures that all Information is retained for disclosure and shall permit the *Employer* to inspect such records as requested from time to time.

## The *Contractor* acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the *Employer* may be obliged to disclose it in accordance with this clause 21.

## Publicity, Media and Official Enquiries

## Without prejudice to the *Employer*’s obligations under the FOIA, neither Party shall make any press announcement or publicise this contract or any part thereof in any way, except with the consent of the other party.

## Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-*Contractor*s, suppliers, professional advisors and *Contractor*s comply with clause 22.1 above.

## Security

## The *Employer* shall be responsible for maintaining the security of the Park in accordance with its standard security requirements. The *Contractor* shall comply with all security requirements of the *Employer* while on the site, and shall ensure that all Staff comply with such requirements.

## The *Employer* shall provide the *Contractor* upon request copies of its written security procedures and shall afford the *Contractor* upon request with an opportunity to inspect its physical security arrangements.

## Intellectual Property Rights

## All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

1. furnished to or made available to the *Contractor* by or on behalf of the *Employer*shall remain the property of the *Employer*; and
2. prepared by or for the *Contractor* on behalf of the *Employer* for use, or intended use, in relation to the performance by the *Contractor* of its obligations under this contract shall belong to the *Employer*,

and the *Contractor* shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of this contract) without prior written consent of the *Employer*, use or disclose any Intellectual Property Rights in the IP Materials.

## The *Contractor* hereby assigns to the *Employer*, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 24.1(b). This assignment shall take effect on the contract date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the *Contractor*. The *Contractor* shall execute all documentation necessary to execute this assignment.

## The *Contractor* shall waive or procure a waiver of any moral rights subsisting in copyright produced by this contract or the performance of this contract.

## The *Contractor* shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this contract grants to the *Employer* a non-exclusive licence or, if itself a licensee of those rights, shall grant to the *Employer* an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the *Contractor* to sub-license, transfer, novate or assign to other Contracting Authorities, a Replacement *Contractor* or to any other third party supplying services to the *Employer*.

## The *Contractor* shall not infringe any Intellectual Property Rights of any third party in Providing the Works and the *Contractor* shall, from the contract date, indemnify and keep indemnified and hold the *Employer* and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the *Employer* or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

1. items or materials based upon designs supplied by the *Employer*; or
2. the use of data supplied by the *Employer* which is not required to be verified by the *Contractor* under any provision of this contract.

## The *Employer* shall notify the *Contractor* of any claim or demand brought against the *Employer* for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the *Contractor*.

## The *Contractor* shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the *Contractor*, provided always that the *Contractor*:

1. shall consult the *Employer* on all substantive issues which arise during the conduct of such litigation and negotiations;
2. shall take due and proper account of the interests of the *Employer*; and
3. shall not settle or compromise any claim without the *Employer*’s prior written consent (not to be unreasonably withheld or delayed).

## The *Employer* shall at the request of the *Contractor* afford to the *Contractor* all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the *Employer* or the *Contractor* by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the *Contractor*’s obligations under this contract and the *Contractor* shall indemnify the *Employer* for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The *Contractor* shall not, however, be required to indemnify the *Employer* in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 24.5(a) or (b).

## Assignment and Novation

## The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:

1. any Contracting Body; or
2. any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.

## The *Contractor* does not, without the written consent of the Service Manager, assign or transfer this contract, or any part of, share of or interest in it.  In the absence of the Service Manager’s written consent no sum of money becoming due under this contract is payable to any person other than the Contractor.

## The *Employer* is entitled to, and the *Contractor* gives consent to, the novation of this contract or any part thereof to:

1. any Contracting Body; or
2. any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;

upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Contractor* pursuant to this contract, the novation shall be a compensation event.

## Any change in the legal status of the *Employer* such that it ceases to be a Contracting Body does not affect the validity of this contract.  In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

## If this contract is novated to a body which is not a Contracting Body or if a successor body which is not a Contracting Body becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the Contractor.