

## BPA Standard Conditions for Construction Work (with or without design)

### 1. Definitions and interpretation

1.1 In these BPA Standard Conditions for Construction Work ("**Conditions**"), the following terms have the following meanings:

<b>BPA</b>	British Pipeline Agency Limited.
<b>Contract</b>	the contract between BPA and the Contractor for the carrying out of the Works incorporating these Conditions, the Contract Data, the Purchase Order, the Specification and any other documents attached to or referred to in the Contract Data or the Purchase Order.
<b>Contract Data</b>	the Contract Data document attached to these Conditions (BPA Form 716).
<b>Contract Price</b>	the sum payable to the Contractor for carrying out the Works, as may be adjusted in accordance with these Conditions and as specified in the Contract Data.
<b>Contractor</b>	the person, firm or company carrying out the Works, as identified in the Contract Data, and its employees, agents and authorised sub-contractors.
<b>Date for Completion</b>	the date for completion of the Works or section or phase of Works specified in the Contract Data, as may be extended in accordance with clause 4.
<b>Documents</b>	all drawings, details, designs, photographs, plans, calculations, specifications, reports and other documents or materials in any medium prepared by or on behalf of the Contractor in relation to the design of the Works.
<b>Nominee</b>	the person appointed by BPA or the Contractor under clause 2.5.
<b>Purchase Order</b>	the purchase order issued by BPA to the Contractor.
<b>Rectification Period</b>	the period stated in the Contract Data during which the Contractor is required to remedy defects in the Works.
<b>Specification</b>	the specification for the Works that is agreed between the parties, including any plans and drawings.
<b>Working Day</b>	a day other than a Saturday, Sunday or public holiday in England.
<b>Works</b>	the Works to be carried out by the Contractor, as briefly described in the Purchase Order and more particularly described in the Specification.

1.2 In these Conditions:

- 1.2.1 any term indicating gender includes any gender;
- 1.2.2 any term indicating the singular includes the plural and vice versa;
- 1.2.3 a reference to a party shall include that party's successors and permitted assigns;
- 1.2.4 a reference to a "person" includes a natural person, corporate body and unincorporated body;
- 1.2.5 any words following the terms "including", "include", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition or phrase preceding those terms;
- 1.2.6 any reference to a clause is a reference to such clause of these Conditions; and
- 1.2.7 any reference to a statute or statutory provision includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation made under it.

1.3 Clause headings are for ease of reference only and shall not affect the interpretation of these Conditions.

### 2. Contract formation and administration

2.1 The Purchase Order constitutes an offer by BPA to procure the Works from the Contractor in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted by the Contractor upon the earlier of:

- 2.2.1 the Contractor issuing written acceptance of the Purchase Order; or
- 2.2.2 any act by the Contractor consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. If the Contractor's quotation is referred to in the Purchase Order or the Contract Data, it is only for the purposes of incorporating the technical information contained therein which is relevant to the Works. Any reference in the Contractor's quotation to the Contractor's terms and conditions is of no effect and the Contractor agrees that its terms and conditions do not apply and are not incorporated into the Contract.

2.4 BPA's rights and remedies under these Conditions are in addition to its rights and remedies implied by law.

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2.5 BPA and the Contractor shall each appoint a Nominee who shall be responsible for the day to day administration of the Contract and who shall be authorised to act for and on behalf of the party who has appointed him.

### 3. Carrying out the Works

3.1 The Contractor shall carry out and complete the Works:

3.1.1 in accordance with the Contract in all respects;

3.1.2 using personnel who are suitably trained and experienced, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;

3.1.3 with reasonable skill, care and diligence in accordance with good practice in the Contractor's industry, profession or trade; and

3.1.4 using materials which are of good quality and fit for the purpose for which they are intended.

3.2 The Contractor shall:

3.2.1 ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Works;

3.2.2 give all statutory notices required in relation to the Works and pass to BPA the originals of all approvals received by the Contractor from relevant statutory authorities;

3.2.3 not do or omit to do anything which may cause BPA to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business or to breach any contract between BPA and a third party to which the Works relate;

3.2.4 provide all equipment, tools and vehicles and such other items as are required to provide the Works;

3.2.5 at all times have a competent supervisor on site who is authorised to accept instructions from BPA;

3.2.6 clear and keep tidy the site of the Works to the satisfaction of BPA; and

3.2.7 not cause any nuisance to or interference with members of the public and the owners and occupiers of property adjoining the site of the Works and or trespass on any adjoining property.

3.3 To the extent that the Contractor is responsible for the design of the Works, the Contractor shall exercise in such design all the reasonable skill, care and diligence to be expected of a duly qualified and experienced professional designer undertaking the design of works similar in scope and character to the Works. Without prejudice to the foregoing, the Contractor shall be fully responsible in all respects for the design of the parts of the Works which he is required to design, including any design proposed or carried out by or on behalf of the BPA and/or any design forming part of the Specification.

3.4 BPA shall:

3.4.1 provide the Contractor with reasonable access at reasonable times to BPA's premises or any site which the Contractor is required to attend for the purpose of providing the Works; and

3.4.2 provide such information as the Contractor may reasonably request for the carrying out of the Works and BPA considers reasonably necessary for the purpose of providing the Works.

3.5 BPA shall at all reasonable times have access to inspect any work which is being carried out for, or any materials that will be utilised in, the Works.

3.6 BPA reserves the right to refuse entry to its premises to any of the Contractor's personnel at its discretion.

3.7 Before completion of the Works, the Contractor shall, at its own cost, supply to BPA such Documents and related information as may be stated in the Specification or as BPA may reasonably require, showing or describing the Works as built and concerning the maintenance and operation of the Works.

3.8 No review, approval or acknowledgement by BPA shall relieve the Contractor from any liability or obligation under the Contract.

### 4. Starting, completion and extension of time

4.1 The Contractor shall commence the Works within seven days following receipt of notice to proceed from BPA. The Contractor shall regularly and diligently carry out and complete the Works by the Date for Completion.

4.2 If the Works are to be completed in sections or phases as defined in the Specification or the Contract Data, all references to the term 'Date for Completion' shall mean the Date for Completion applicable to each section or phase as stated in the Contract Data and the provisions of this clause 4 and clause 9 shall apply separately to each such section or phase.

4.3 The Contractor shall at all times provide sufficient supervised labour to ensure completion of the Works by the Date for Completion. If in the opinion of BPA the Contractor is not proceeding regularly and diligently with the Works and it is reasonably apparent that the Works

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will not be complete by the Date for Completion, BPA may (without prejudice to its other rights and remedies) accelerate the progress of the Works by employing its own labour or that of other contractors. BPA may recover any loss and/or expense and/or damages incurred in connection therewith from the Contractor as a debt or deduct it from the Contract Price.

- 4.4 If and whenever it becomes reasonably apparent that the progress of the Works is being delayed due to:
- 4.4.1 an instruction to open up or test any work or materials under clause 5.1.2 unless the inspection or test shows that the work or materials are not in accordance with the Contract;
  - 4.4.2 a variation instructed under clause 11;
  - 4.4.3 a suspension under clause 19;
  - 4.4.4 the carrying out by any local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Works, or failure to carry out such work;
  - 4.4.5 exceptionally adverse weather conditions;
  - 4.4.6 loss or damage to the Works occasioned by fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake or aircraft and other aerial devices or articles dropped therefrom;
  - 4.4.7 riot, civil commotion or terrorism;
  - 4.4.8 strike or other industrial dispute which is not limited to the employees of the Contractor and/or any of its sub-contractors;
  - 4.4.9 delay in receipt of any necessary permission or approval of any statutory body which the Contractor has taken all practical steps to avoid or reduce;
  - 4.4.10 any impediment, prevention or default by BPA or anyone for whom BPA is responsible;
  - 4.4.11 suspension by the Contractor under clause 10.13; or
  - 4.4.12 a Force Majeure Event,
- the Contractor shall give written notice as soon as possible and in any event not later than seven days after the delay or likely delay becomes reasonably apparent, specifying the particulars of the expected effects of the delay and an estimate of the expected delay in completion.
- 4.5 On receiving a notice and particulars in accordance with clause 4.4, unless the Contract provides otherwise, BPA shall grant an extension of time by fixing such later date as the Date for Completion as it then estimates to be fair and reasonable.
- 4.6 The Contractor shall not be entitled to any extension of time for any delay arising by reason of any error, omission, negligence or default of the Contractor.
- 4.7 It shall be a condition precedent to the grant of any extension of time that the Contractor complies with clause 4.4 and constantly uses its best endeavours to prevent delay and to mitigate the effect of any delay.
- 4.8 When in BPA's opinion the Works are complete, BPA shall issue a certificate to that effect. BPA may at its discretion issue a certificate of completion notwithstanding that minor defects and/or items of work remain to be remedied or completed, in which event BPA shall list such defects and/or incomplete work in a schedule and the Contractor shall remedy or complete the same not later than seven days from the date of completion (or such longer period as the parties may agree acting reasonably). Where such defects and/or incomplete work have not been remedied or completed within the requisite time period, the BPA may employ others to carry out the necessary work and recover the cost of the same from the Contractor as a debt or deduct the cost from the Contract Price.
- 4.9 If the Contractor fails to achieve completion of the Works on or before the Date for Completion, the Contractor shall pay or allow to BPA liquidated damages for delay at the rate specified in the Contract Data for the period between the Date for Completion and the date of completion. BPA may deduct such liquidated damages from the Contract Price or recover them from the Contractor as a debt.
- 5. Instructions**
- 5.1 BPA may issue any reasonable instruction to the Contractor in respect of the Works, including instructions:
- 5.1.1 requiring the removal or rectification of work or materials not in accordance with the Contract; and
  - 5.1.2 requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or any executed work, the cost of such opening up or testing (including the cost of making good) being added to the Contract Price unless provided for in the Contract or unless the inspection or test shows that the materials or work are not in accordance with the Contract.
- 5.2 The Contractor shall co-operate with BPA in all matters relating to the Works and forthwith comply with BPA's instructions.
- 5.3 If, within seven days after receipt of a notice from BPA requiring compliance with an instruction, the Contractor does not comply, BPA may employ and pay other persons to execute the work necessary to give effect to the instruction. BPA may recover any loss and/or expense and/or damages incurred in connection therewith from the Contractor as a debt or deduct it from the Contract Price.

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### 6. Materials

- 6.1 The value of materials delivered to site or other BPA premises but not incorporated into the Works shall only be included in interim payments at BPA's discretion and where the Contractor is able to establish that it has full clear and unencumbered title to the materials. Where the value of any materials intended for incorporation into the Works has been included in any interim payment, they shall upon such payment become BPA's property, but the Contractor shall remain responsible for loss or damage to them as set out in clause 15. The Contractor shall have no right to claim or retake ownership of materials once title passes to BPA.
- 6.2 Where title to materials passes to BPA prior to incorporation into the Works, the Contractor shall store those materials separately from other items and clearly mark them with the words "property of BPA" and the Purchase Order number.

### 7. Site conditions

- 7.1 The Contractor shall be deemed to have had an opportunity to inspect the physical and other conditions of and/or affecting the site of the Works (including the soil, sub-surface conditions, obstructions, contamination, existing structures, hazardous materials, voids, watercourses, pipes, sewers, drains, cables, structures and underground services) and shall be deemed to have fully acquainted himself with the same and to have obtained all necessary information as to the risks, contingencies and other circumstances which may influence or affect the carrying out of the Works. No failure on the part of the Contractor to discover or foresee any condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Contractor to an addition to the Contract Price or to claim damages or any additional payment or to an extension of time.
- 7.2 The Contractor shall not be entitled to rely upon any survey, report, data or other document prepared by or on behalf of BPA regarding any such matter as is referred to in clause 7.1 and BPA makes no representation and gives no warranty as to the accuracy or completeness of any such survey, report, data or document or any representation, recommendation or statement, whether negligently or otherwise made, therein contained.

### 8. Compliance

- 8.1 The Contractor shall at all times comply with all applicable laws and regulations (including without limitation the Factories Act 1961, the Health and Safety at Work etc. Act 1974 and the Construction (Design and Management) Regulations 2015) and with BPA's Health and Safety and Environmental Policies. Copies of BPA's Health and Safety and Environmental Policies are available upon request.
- 8.2 BPA shall be entitled to deduct from any sums due to the Contractor under the Contract any costs, fines or charges which BPA is required to pay to the Health and Safety Executive, whether pursuant to the Health and Safety (Fees) Regulations 2012 or otherwise, as a result of or in consequence of any breach of health and safety law caused by the Contractor which requires intervention from the Health and Safety Executive.
- 8.3 The Contractor shall observe and comply with all applicable laws, regulations and codes of practice relating to bribery, corruption, slavery and human trafficking, including the Bribery Act 2010 and the Modern Slavery Act 2015.
- 8.4 The Contractor shall observe and comply with all applicable laws, regulations and codes of practice relating to data protection (including the Data Protection Act 1998 or 2018 or any successor legislation together with (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy) and shall only process data (as defined in the legislation) in accordance with BPA's instructions for the purposes of performing the Contractor's obligations under the Contract.
- 8.5 When working at BPA's premises the Contractor shall comply with BPA's health, safety, environmental and security rules and regulations and such directions as may be issued by BPA's staff.
- 8.6 BPA's Business Conduct Policy Statement can be viewed at [www.bpa.co.uk](http://www.bpa.co.uk) in the 'Policy on Business Conduct' section. The Contractor shall comply with BPA's principles, values and expectations as set out therein and conduct its business in an ethical manner. BPA reserves the right to require the Contractor to provide supporting documentation to demonstrate compliance with BPA's Business Conduct Policy Statement and any failure to comply with this clause 8.6 shall be deemed a material breach of the Contract.

### 9. Defects

- 9.1 If any defects or other faults appear in the Works within the Rectification Period due to any failure of the Contractor to comply with its obligations under the Contract:
- 9.1.1 such defects or other faults shall be specified by BPA in a schedule of defects which it shall deliver to the Contractor as an instruction at any time up to the date fourteen days after the expiry of the Rectification Period; and
- 9.1.2 notwithstanding clause 9.1.1, BPA may at any reasonable time issue instructions requiring any such defect or other fault to be made good, provided that no instructions under this clause 9.1.2 shall be issued more than fourteen days after the expiry of the Rectification Period.
- 9.2 The Contractor shall, unless BPA otherwise instructs, make good all defects and other faults notified by BPA under clause 9.1 within a reasonable time or, in cases of urgency, within such period of time as BPA may specify. If BPA does so otherwise instruct, an appropriate deduction shall be made from the Contract Price in respect of the defects or other faults not made good.

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9.3 If the Contractor fails to make good any defect or other fault in accordance with clause 9.2, BPA may make other arrangements for the necessary making good and recover the cost of the same from the Contractor as a debt or deduct the cost from the Contract Price.

### 10. Price and payment

10.1 The Contract Price shall be in pounds sterling (unless otherwise stated in the Purchase Order or as specified in the Contract Data) and shall be fixed and shall not be adjusted except as provided for in these Conditions or otherwise expressly agreed in writing by BPA.

10.2 The Contractor shall be entitled to monthly interim payments for the value of work properly executed by the Contractor together with the value of materials properly brought onto site and any other amount to which the Contractor is entitled under the Contract, less the amount of all previous interim payments made under the Contract and any amount BPA is entitled to deduct. No interim payment shall constitute approval by BPA of work executed or evidence that the Works or any materials to which the payment relates are in accordance with the Contract.

10.3 The due dates for interim payments shall be as stated in the Contract Data.

10.4 Not later than seven days before each due date for payment, the Contractor shall submit to BPA an application for payment stating the sum the Contractor considers will become due on the due date for payment and the basis on which that sum is calculated, together with sufficient substantiation and breakdown to allow BPA to ascertain the amount due. Applications shall state the Purchase Order number and the Contractor's VAT registration number and shall be sent to BPA in accordance with clause 24.1.

10.5 The final date for payment of an interim payment shall be thirty days after the due date for payment.

10.6 Not later than five days after the due date for payment, BPA shall issue a notice to the Contractor specifying the sum BPA considers to be or have been due at the due date for payment and the basis on which that sum is calculated. If BPA does not issue such a notice, then provided the Contractor's application for payment complies with clause 10.4, the sum set out in the Contractor's application for payment shall become due instead.

10.7 The party who is required to make payment of the sum identified as being due in the notice issued by BPA under clause 10.6 (or, if no notice has been issued, the Contractor's application for payment) shall, subject to clause 10.8, make payment of that sum on or before the final date for payment.

10.8 If the party who is required to make payment of the sum identified as being due in the notice issued by BPA under clause 10.6 (or, if no notice has been issued, the Contractor's application for payment) intends to pay the other party less than such sum, it shall issue a notice to that other party not later than one day before the final date for payment specifying the sum it considers to be due at the date the notice is given and the basis on which that sum is calculated.

10.9 Prices are exclusive of VAT unless expressly agreed otherwise, but inclusive of all other taxes and import duties. Subject to receipt of a valid VAT invoice from the Contractor not later than fifteen days before the final date for payment, BPA shall pay any VAT properly chargeable on the Works.

10.10 If BPA fails to make any payment due to the Contractor under the Contract by the final date for payment, BPA shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until the date of actual payment of the overdue amount, whether before or after judgment. The parties agree that this clause 10.10 provides a substantial remedy for late payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

10.11 BPA may at any time, without limiting any of its other rights or remedies, set off any liability of the Contractor to BPA against any liability of BPA to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10.12 BPA shall be entitled to deduct a retention of the percentage stated in the Contract Data from all payments due to the Contractor. The due dates for the release of retention shall be the dates stated in the Contract Data or, if later, the dates on which the Contractor submits an application for payment for the amount of retention which is due. Clauses 10.5, 10.6, 10.7, 10.8 and 10.10 shall apply to the release of the retention. BPA shall be under no fiduciary obligation to the Contractor with regard to the retention and under no obligation to set the retention aside in a separate bank account.

10.13 Where a sum properly due to the Contractor under the Contract is not paid in full by the final date for payment, the Contractor may suspend performance of any or all of its obligations under the Contract, subject to first giving BPA at least fourteen days' written notice stating the ground or grounds on which the Contractor intends to suspend performance. In the event of suspension, BPA shall pay the Contractor a reasonable amount in respect of the costs and expenses reasonably incurred by the Contractor as a result of the exercise of its right to suspend performance, and such payment shall be the Contractor's sole compensation for suspension. The Contractor's right to suspend performance shall cease immediately upon payment in full of the relevant sum due.

10.14 The obligation of BPA to make any payment under the Contract is subject to the provisions of the Construction Industry Scheme ('CIS'). The Contractor shall provide evidence of its CIS registration to BPA.

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### 11. Specification and variations

- 11.1 If the Contractor considers that there is any omission, inconsistency or inaccuracy in the Specification, or that any modifications should be made to the Specification, the Contractor shall immediately notify BPA.
- 11.2 No departure from the Specification or modification to the Works shall be made without BPA's prior written authorisation.
- 11.3 BPA may order any variation to the quality or quantity of the Works (including in either case the addition, omission or substitution of any work and the alteration of the standard of materials to be used) or to the manner in which the Works are to be carried out. It shall be a condition precedent to payment for any variation that the Contractor produces a written variation instruction from BPA.
- 11.4 The value of variations shall be agreed in writing by BPA and the Contractor or, failing agreement, shall be the amount valued by BPA on a fair and reasonable basis taking into account any similar or analogous rates and prices included in the Contract.

### 12. Direct loss and/or expense

- 12.1 If in the execution of the Works the Contractor incurs or is likely to incur direct loss and/or expense for which it would not be reimbursed by a payment under any other provision of the Contract because the regular progress of the Works has been or is likely to be materially affected by:
- 12.1.1 a variation instructed under clause 11;
- 12.1.2 delay in receipt of any necessary permission or approval of any statutory body which the Contractor has taken all practical steps to avoid or reduce; or
- 12.1.3 any impediment, prevention or default by BPA or anyone for whom BPA is responsible,
- the Contractor shall make an application to BPA for payment of the direct loss and/or expense which has been or is being incurred as soon as, and in any event not later than fourteen days after, it has become or should reasonably have become apparent to the Contractor that the regular progress of the Works has been or is likely to be affected. In support of its application the Contractor shall submit to BPA such information and details as BPA may reasonably require. It shall be a condition precedent to the payment of any direct loss and/or expense under the Contract that the Contractor complies with this clause 12.1.
- 12.2 If the Contractor makes an application under clause 12.1, then save where the Contract provides that there shall be no addition to the Contract Price or otherwise excludes the operation of this clause 12, the amount of the direct loss and/or expense which has been or is being incurred shall be ascertained by BPA and added to the Contract Price.
- 12.3 The Contractor shall not be entitled to payment of any direct loss and/or expense on account of any delay or disruption:
- 12.3.1 arising by reason of any error, omission, negligence or default of the Contractor; or
- 12.3.2 which is concurrent with another delay for which the Contractor is responsible.

### 13. Audit

- 13.1 BPA shall have the right at its own expense to inspect and audit the relevant books, accounts and records of the Contractor in connection with the Services and all transactions related thereto as may be necessary in the opinion of BPA to verify that the requirements of the Contract are being met and shall have access to all information relating to the rates and prices as may be reasonably required to verify payments made to or by the Contractor under or pursuant to the Contract. Such inspections and audits may be carried out by BPA or its authorised representatives at any time from the effective date of the Contract until the expiry of twenty-four (24) months following the settlement of the final account.
- 13.2 The Contractor shall co-operate fully in the conduct of such inspections and audits and BPA shall have the right to reproduce and retain copies of any records. Any incorrect payments made by BPA shall be adjusted in accordance with the findings of said audit.
- 13.3 The Contractor shall include for itself identical rights of audit in all sub-contracts and such rights shall be extendible for the benefit of BPA and its authorised representatives.

### 14. Intellectual property rights

- 14.1 The Contractor assigns to BPA, with full title guarantee and free from all third party rights, all intellectual property rights in the design of the Works and in the Documents.
- 14.2 The Contractor shall obtain waivers of all moral rights in the design of the Works and in the Documents, to which any individual is or may be at any future time entitled under the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 14.3 The Contractor shall, promptly at BPA's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as BPA may from time to time reasonably require for the purpose of securing for BPA the full benefit of all right, title and interest in and to the intellectual property rights assigned to BPA.

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### 15. Indemnity and damage

- 15.1 In this clause 15, a reference to BPA shall include BPA's clients, shareholders, principals, employees, agents and every third party referred to in clause 29.1.
- 15.2 The Contractor shall indemnify and keep BPA indemnified against all liabilities, costs, expenses, damages, losses and proceedings (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation, interest and penalties) suffered or incurred as a result of or in connection with:
- 15.2.1 injury or illness to or death of any person whatsoever arising out of or in connection with the Contractor's performance of the Works;
  - 15.2.2 loss of or damage to any property whatsoever arising out of or in connection with the Contractor's performance of the Works;
  - 15.2.3 any claim made against BPA for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the design of the Works;
  - 15.2.4 any claim made against BPA for death, personal injury or damage to property arising out of, or in connection with, defects in the Works;
  - 15.2.5 any claim made against BPA arising out of or in connection with the carrying out of the Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Works by the Contractor; and
  - 15.2.6 any infringement or alleged infringement by the Contractor of any applicable laws or regulations.
- 15.3 If during the carrying out of the Works there is any loss of or damage to the Works:
- 15.3.1 the Contractor shall forthwith notify BPA;
  - 15.3.2 the Contractor shall authorise the insurers to pay to BPA all monies from the construction all risks insurance policy;
  - 15.3.3 if instructed to do so by BPA, the Contractor shall with due diligence restore the damaged work, replace or repair any damaged materials and remove and dispose of any debris; and
  - 15.3.4 the Contractor shall not be entitled to any payment for complying with clause 15.3.3 other than payments of monies received under the construction all risks insurance policy.
- 15.4 Any items of property, plant and equipment on site belonging to the Contractor remain on site entirely at the Contractor's risk. BPA accepts no liability whatsoever for loss or damage to such property, plant and equipment except to the extent that the same is due to any negligence, breach of statutory duty, omission or default on the part of BPA.

### 16. Insurance

- 16.1 The Contractor shall carry:
- 16.1.1 a policy of construction all risks insurance for the full reinstatement value of the Works, plus at least 15% to cover professional fees, in the joint names of BPA and the Contractor such that the insurers have no right of recourse against either party and shall maintain that insurance in place until the whole of the Works are complete;
  - 16.1.2 public liability insurance of at least £5,000,000 (or such other amount as may be specified in the Contract Data) for any one claim and shall maintain that insurance in place until the end of the Rectification Period;
  - 16.1.3 employer's liability insurance of at least the minimum amount required by law and shall maintain that insurance in place until the end of the Rectification Period; and
  - 16.1.4 any other insurance stated in the Contract Data and shall maintain that insurance in place until the end of the Rectification Period.
- 16.2 If the Contractor is responsible for the design of any part of the Works, the Contractor shall carry professional indemnity insurance of at least £1,000,000 (or such other amount as may be specified in the Contract Data or the Specification) for any one claim and maintain such insurance in place at all times until six years after the date of completion of the Works or such other period as may be specified in the Contract Data.
- 16.3 The Contractor shall, both prior to commencing the Works and thereafter at such times as BPA may reasonably require, produce evidence of insurance for inspection by BPA.

### 17. Confidentiality

- 17.1 All information relating to the Contract and the Works which is not already demonstrably in the public domain shall be treated as confidential and shall only be used by the Contractor for the performance of its obligations under the Contract, or as may be required by law.
- 17.2 The Contractor shall not disclose or publish any information concerning the Works for the purposes of publicity without express written permission from BPA.

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### 18. Collateral warranties

- 18.1 If instructed to do so by BPA at any time, the Contractor shall provide a deed or deeds of collateral warranty in a form to be supplied by BPA in favour of any third party with an interest in the Works. If the Contractor fails to execute and deliver any deed of warranty within twenty one days of BPA's instruction, no further sums shall become due to the Contractor pursuant to the Contract until such deed of warranty has been executed and delivered to BPA as required.
- 18.2 If the Contractor sub-contracts any of its obligations under the Contract, the Contractor shall procure that each sub-contractor executes and delivers a deed of collateral warranty in favour of BPA in a form to be supplied by BPA within fourteen days of the date of the relevant sub-contract. If the Contractor fails to procure any deed of warranty from a sub-contractor within such period, no further sums shall become due to the Contractor pursuant to the Contract until such deed of warranty has been executed and delivered to BPA as required.

### 19. Suspension

- 19.1 BPA may suspend the performance of all or any part of the Works for any reason upon giving notice to the Contractor. The Date for Completion shall be adjusted to reflect such suspension.
- 19.2 Upon suspension, the Contractor shall immediately secure, make safe and protect the Works and cease further performance. The Contractor shall be entitled to be paid for any Works already carried out in accordance with the Contract. In addition, except where the suspension is attributable to any breach, default or failure of the Contractor, BPA shall compensate the Contractor for:
- 19.2.1 personnel retained on standby during the period of suspension at the written request of BPA; and
  - 19.2.2 other items directly related to the suspension provided that such items have been specifically authorised in advance by BPA.
- 19.3 The Contractor shall resume performance of the Works as soon as reasonably practicable after receiving notice to do so.
- 19.4 If a suspension lasts more than ninety days and relates to the entirety of the Works, the Contractor may submit to BPA a written request for the Works to be resumed, and if no instructions to resume are given within twenty eight days after the Contractor's request, the Contract shall terminate, in which case clause 20.3 shall apply.

### 20. Termination

- 20.1 BPA may terminate the Contract in whole or in part at any time with immediate effect by giving the Contractor written notice, in which case BPA shall pay the Contractor for any Works already properly carried out in accordance with the Contract, together with fair and reasonable compensation for work-in-progress at the time of termination.
- 20.2 Without limiting its other rights or remedies, BPA may terminate the Contract with immediate effect by giving written notice to the Contractor if:
- 20.2.1 the Contractor commits a material breach of the Contract and fails to remedy that breach within a period of seven days after being notified in writing to do so;
  - 20.2.2 the Contractor repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with having the intention or ability to perform the Contract;
  - 20.2.3 the Contractor suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - 20.2.4 the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Contractor is a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
  - 20.2.5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor, other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
  - 20.2.6 (being an individual) the Contractor is the subject of a bankruptcy petition or order;
  - 20.2.7 a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets;
  - 20.2.8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Contractor;
  - 20.2.9 (being a company) a floating charge holder over the Contractor's assets has become entitled to appoint or has appointed an administrative receiver;

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20.2.10 a person becomes entitled to appoint a receiver, or a receiver is appointed, over the Contractor's assets;

20.2.11 any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events listed in clause 20.2.3 to clause 20.2.10 inclusive; or

20.2.12 the Contractor suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business.

20.3 Following termination under clause 20.2 (or under any other clause where this clause 20.3 is stated to apply), BPA shall pay the Contractor for any Works already properly executed in accordance with the Contract, but shall have no other liability of whatsoever nature to the Contractor under or in connection with the Contract.

20.4 On termination of the Contract for any reason, the Contractor shall immediately deliver to BPA all Documents, whether or not then complete. If the Contractor fails to do so, BPA may enter the Contractor's premises and take possession of them. Until they have been delivered, the Contractor shall be solely responsible for their safe keeping and shall not use them for any purpose not connected with the Contract.

20.5 BPA shall have no liability to the Contractor for any loss of profit or indirect or consequential losses arising out of the termination of the Contract for any reason.

20.6 Termination of the Contract shall not determine the operation of any provisions of the Contract which remain capable of operation after termination, or affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination.

### 21. Force majeure

21.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstance or cause beyond its reasonable control ("**Force Majeure Event**").

21.2 The Contractor shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations and each party shall bear its own costs arising as a result of the Force Majeure Event.

21.3 If a Force Majeure Event prevents, hinders or delays the Contractor's performance of its obligations for a continuous period of more than thirty Working Days, BPA may terminate the Contract immediately by giving written notice to the Contractor, in which case clause 20.3 shall apply.

### 22. Assignment and sub-contracting

22.1 BPA shall be entitled to assign the benefit of the Contract without the Contractor's consent.

22.2 The Contractor shall not assign, transfer or otherwise deal in any manner with its rights and benefits under the Contract.

22.3 The Contractor shall not sub-contract any of its obligations under the Contract without BPA's written consent. Such consent shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the performance of any sub-contracted obligations as if it had performed them itself.

### 23. Non-solicitation

23.1 In order to protect BPA's legitimate business interests, the Contractor covenants with BPA that it shall not, and shall not attempt to:

23.1.1 solicit or entice away from the employment or service of BPA; or

23.1.2 employ or engage or otherwise facilitate the employment or engagement of,

any person employed or engaged by BPA in relation to the management or performance of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement (other than by means of an advertising campaign open to all-comers and not specifically targeted at such persons).

23.2 The Contractor shall be bound by the covenant set out in clause 23.1 for a period of six months after the date of completion of the Works (or if applicable six months after the date of termination of the Contract).

23.3 If the Contractor commits any breach of clause 23.1, the Contractor shall pay to BPA on demand a sum equal to one year's basic salary or the annual fee that was payable by BPA to the person in question, plus the recruitment costs incurred by BPA in replacing such person.

### 24. Notices

24.1 Any notice to be given under the Contract shall be in writing and shall be:

24.1.1 delivered by hand or sent by first class post to the other party's registered office address, or such other address as may be notified by that party in writing; or

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24.1.2 sent by email to the email address of the other party's Nominee, or such other email address as may be notified by that party in writing.

24.2 Notices shall be deemed to have been received:

24.2.1 if delivered by hand, on the date and at the time of delivery, as evidenced by a signed delivery receipt;

24.2.2 if sent by first class post, at 9:00am on the second Working Day after the date of posting; and

24.2.3 if sent by email, on the date and at the time of sending.

### 25. No partnership

25.1 Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### 26. Disputes and governing law

26.1 Either party may give notice at any time of its intention to refer any dispute arising under the Contract to adjudication. Any adjudication shall be governed by the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended) and the adjudicator nominating body is the Royal Institution of Chartered Surveyors.

26.2 Subject to clause 26.1, if there is any dispute between the Contractor and BPA under or in relation to the Contract, each party shall give serious consideration to any request by the other to resolve the dispute through negotiation or mediation.

26.3 Subject to clauses 26.1 and 26.2, any dispute between the Contractor and BPA under or in relation to the Contract shall be determined by litigation subject to the exclusive jurisdiction of the English courts, provided that nothing shall limit the right of either party to take proceedings in any other court of competent jurisdiction for the purposes of enforcing a judgment of the English courts.

26.4 The Contract shall be governed by and construed in accordance with English law.

### 27. Severance

27.1 If any court or other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted or modified to the extent necessary to make it valid, legal and enforceable, and the validity and enforceability of the other provisions of the Contract shall not be affected.

### 28. No waiver

28.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 29. Third party rights

29.1 The following third parties shall be entitled to the benefit of the provisions of the Contract and shall have the right to enforce the same:

29.1.1 any client, shareholder or principal of BPA; and

29.1.2 any third party specifically identified in the Contract Data.

29.2 Subject to clause 29.1, a person who is not a party to the Contract shall not have any rights to enforce its terms.

29.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any third party.

### 30. Entire agreement

30.1 The Contract constitutes the entire agreement and understanding between the parties in relation to its subject matter and supersedes all previous agreements (whether written or oral) between the parties relating thereto. The Contractor acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or warranty (whether express or implied) other than as expressly set out in the Contract.

30.2 No amendment to these Conditions shall be valid unless agreed in writing and signed by both parties.

### 31. Language

31.1 All documentation, correspondence and other communication required as part of the Contract will be in English unless otherwise agreed.