

MALTBY COLLIERY LIMITED

CONDITIONS OF CONTRACT FOR SUPPLY OF LABOUR SERVICES

1. (1) In these Conditions of Contract unless the context otherwise requires:-

- (a) "**Maltby Colliery**" means Maltby Colliery Limited (Company registration number 06057412) with the registered address West Terrace, Esh Winning, Durham, County Durham, DH7 9PT or the subsidiary company and defined by section 1159 of the Companies Act 2006 or ancillary organisation of Maltby Colliery Limited on whose behalf the Contract is made;
- (b) "**Commencement Date**" means the date specified in the Contract or, if no date is specified, agreed with the Supervising Officer for the commencement of the Services;
- (c) "**Contract**" means:
- (i) the invitation to tender issued by Maltby Colliery (if any), the Contractor's tender and Maltby Colliery's acceptance thereof or, in the case of a term contract, any call-off order by Maltby Colliery in accordance therewith; or
- (ii) Maltby Colliery's offer and the Contractor's acceptance thereof;

whether made orally or in writing and together in either case with these Conditions of Contract, any special conditions, any specification and any documents incorporated in the Contract by express reference;

- (d) "**Contractor**" means the person, firm, company or other entity with whom the Contract is made;
- (e) "**Contract Period**" means, subject to the provisions of these Conditions of Contract, the period starting on the Commencement Date during which the Services are to be performed;
- (f) "**Employee(s)**" means the person(s) supplied by the Contractor to carry out the Services, including sub-contractors, servants, employees and agents engaged by the Contractor for such purpose;
- (g) "**Hargreaves Group**" means Maltby Colliery and its subsidiaries from time to time and the ultimate holding company (if any) of Maltby Colliery and every other subsidiary of the same ultimate holding company (if any) from time to time (and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006);
- (h) "**Interim Certificate**" means a certificate issued pursuant to Condition 7(5);
- (i) "**Loss**" means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;
- (j) "**Manager**" means (where the Site is a mine or quarry as defined in the Mines & Quarries Acts 1954-71) the person for the time being acting as Manager pursuant to the Mines and Quarries Acts 1954-1971 at the Site;
- (k) "**Personal Data**" has the same meaning as the term 'personal data' under the Data Protection Act 1998;
- (l) "**Services**" means the general labour work which Maltby Colliery require to be carried out by the Contractor as set out in the Contract, or determined in accordance with Condition 3.1 below;
- (m) "**Site**" means the mine or other location where the Services are to be carried out;
- (n) "**Supervising Officer**" means the person appointed for the time being by Maltby Colliery under Condition 2(1).
- (2) The headings of these Conditions of Contract shall not affect the interpretation thereof.
- (3) A 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 statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- (4) These Conditions and the documents referred to herein set out the entire Contract between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. For the avoidance of doubt, the Contract shall expressly exclude any standard terms and conditions of purchase that the Contractor may purport to apply under this Contract. Each party acknowledges that in entering into this Contract it is not relying upon any representation, warranty, promise or assurance made or given by the other party or any other person in any form whatsoever which is not expressly set out in the Contract.

2. (1) Maltby Colliery shall appoint a person to act as Supervising Officer to supervise the Contract on its behalf. The appointment of the Supervising Officer, and any change in that appointment, shall be notified to the Contractor in writing.

(2) The Supervising Officer may from time to time delegate any of the powers, discretions, functions and authorities vested in him by appointing a representative to watch and supervise on his behalf the carrying out of the Services. Any such appointment shall be notified to the Contractor in writing.

3. (1) The Contractor shall during the Contract Period carry out the Services specified in the Contract or, if not specified in detail in the Contract, as determined by the Supervising Officer from time to time during the Contract Period, and the Supervising Officer may at any time vary, add to or reduce any part of the Services required from time to time in accordance with Condition 8.

(2) The Contractor shall carry out the Services with diligence, skill and care, in accordance with any requirement of the Contract and to the satisfaction of the Supervising Officer. The Services shall be carried out during the Contract Period at such time or times and such place or places specified in the Contract or, if not specified in the Contract, by the Supervising Officer.

(3) The Contractor shall commence performance of the Services on the Commencement Date. If the Contractor does not commence performance of the Services on the Commencement Date, Maltby Colliery may rescind the Contract and may recover from the Contractor any and all additional costs which Maltby Colliery incurs in connection with a further contract for the Services and/or executing the Services themselves or by another contractor.

(4) Any failure of the Contractor at any time to provide Employees for the performance of the whole or any part of the Services shall not permit any extension of the Contract Period.

(5) If any defect or fault appears in work carried out by the Contractor and is due to unsatisfactory workmanship, the Supervising Officer may by notice in writing require the Contractor to make good the defect of fault (notwithstanding that the Contract Period may have expired or the execution of the Services may otherwise have been completed). The Contractor shall thereupon at his own cost and within a reasonable time carry out such work as may be necessary to remedy the defect or fault. If the Contractor fails to remedy the defect or fault or fault within a reasonable time, Maltby Colliery shall be entitled to either remedy the defect or fault itself or employ another Contractor to do so and to charge the reasonable cost of so doing to the Contractor, and Maltby Colliery shall be entitled to claim damages from the Contractor for any and all Loss caused to Maltby Colliery as a result of such failure.

(6) Notwithstanding any other provision in the Contract, Maltby Colliery gives no assurance to the Contractor as to the exact nature of the Services to be required from the Contractor under the Contract. Maltby Colliery shall be liable to pay the Contractor only in respect of the Services actually performed by the Contractor and not in respect of any estimate, programme or confirmation of Services given by or on behalf of Maltby Colliery.

4. (1) During the performance of the Contract the Contractor shall be an independent contractor and not a servant of Maltby Colliery. The Employees shall at all times be the employees, servants or agents of the Contractor and not of Maltby Colliery. The Contractor shall bear exclusive responsibility for and pay all salaries, wages, charges, taxes, allowances, expenses, benefits, bonuses and employers' National Insurance contributions or like contribution or levies required, whether by law or otherwise, to be paid by an employer or person engaging labour under contract in respect of the Employees or arising out of the remuneration for the Services, and shall indemnify, keep indemnified and hold Maltby Colliery harmless in respect of any and all Loss incurred or suffered by Maltby Colliery arising from or in connection with such matters.

(2) The Contractor shall engage and have, subject to the provisions of these Conditions, control over the Employees in the carrying out of the Services. The Contractor shall maintain a list of all Employees engaged or to be engaged on any Site in the performance of the Services and at any other time at the request of the Supervising Officer. The Contractor shall also inform the Supervising Officer as soon as possible of any further or replacement or additional Employees who are to be engaged on any Site in the performance of the Services.

(3) Without prejudice to the above provisions, Maltby Colliery shall be at liberty to require the Contractor to remove any Employee from the Site.

(4) Following the commencement of the Contract the Contractor shall not amend the terms & conditions of employment without first seeking the written authority of Maltby Colliery.

5. (1) The Contractor shall only supply Employees who are qualified, skilled and competent to carry out the Services in a safe and satisfactory manner and in particular ensure that Employees meet any necessary requirements of the Contract or which may be specified by the Supervising Officer as to their skill, competence and technical qualifications, either in relation to all Employees or any type of or individual Employee. The Contractor shall ensure that the Employees know of and understand the requirements of the Contract and other matters relevant for the performance of the Services (including without limitation any delegation of the Supervising Officer's powers etc. under Condition 2(2)).

(2) The Contractor shall ensure that the Employees carry out their work to a satisfactory standard and behave in an orderly and responsible manner at the Site and comply with all statutory provisions and requirements affecting the Site or the Services. The Employees while on the Site shall carry means of identification to

prove they are engaged by the Contractor at the Site.

(3) The Contractor and its Employees shall comply with all instructions given by the Supervising Officer, the Manager and other authorised personnel of Maltby Colliery at the Site in connection with the manner of the performance of the Services.

(4) The Contractor shall ensure that all Employees adhere to any authorities given by the Supervising Officer or the Manager and the Contractor.

(5) Where an Employee is required to operate a vehicle or other machinery for which a licence is required, the Contractor shall ensure that the Employee holds a current licence or permit for the appropriate vehicle or machinery which he is required to operate.

(6) The Contractor shall, if so required by the Supervising Officer, nominate one (or more) of the Employees working at the Site to act as lead employee(s) for the purposes of receiving instructions on Site in connection with the Services, acting in a supervisory capacity or communicating with the Employees engaged at the Site.

(7) Unless the Contract otherwise provides, the Contractor shall ensure all Employees are provided with all hand tools reasonably necessary for the performance of the Service.

6. (1) The Contractor shall provide Employees to work between 08.30 - 17.30.

(2) The Employees shall work outside the hours stated in 6(1) only if required to do so by the Supervising Officer. Any such requirement shall be confirmed in writing if made orally.

(3) The Contractor shall ensure that the Employees sign in on arrival and off on departure at the Site and submit to the Supervising Officer on a daily or weekly basis (as directed by the Supervising Officer) time sheets for his approval and signature. At least one copy of the time sheets will be retained by Maltby Colliery and one copy will be retained by the Contractor. The Contractor shall also provide to the Supervising Officer a summary of the time sheets on a monthly basis showing clearly the number of Employees engaged and the number of shifts worked in the month in question. Where the Colliery or site operates a "swipe card system" all the Contractors employees shall utilise this system if directed by the Supervising Officer.

(4) The Contractor shall prepare such records as to the Services provided as the Supervising Officer may require or direct and shall comply with the requirements of the Supervising Officer as to the signing or countersigning of such records.

(5) Employees' working hours each shift shall start to run at the latest of when the Supervising Officer indicates the Employees are to attend the Site or when the Employees are ready and able to start work at the Site. Bathing at the end of a shift and travelling time to and from the Site shall not be part of working hours unless the Contract otherwise provides.

7. (1) The Contractor shall be paid for the Services either:-

(a) the sum stated in the Contract; or

(b) the amount due for the Services are calculated by the Supervising Officer by reference to the hours worked in accordance with the rates and prices contained in the Contract;

in either case with no increase save in respect of any variation ordered under Condition 8.

(2) Maltby Colliery shall in addition pay such VAT as is properly chargeable on the supply of Services under the Contract.

(3) Unless otherwise specified in the Contract or order the amount to be paid to the Contractor under the Condition shall include all payments and expenses in respect of Employees including overtime, travelling and subsistence and in respect of the provision and maintenance of all hand tools required.

(4) Where payment by invoice is specified in the Contract, the Contractor shall apply for payment of the amounts due to him under the Contract by the submission of monthly invoices. Maltby Colliery shall pay the sum of which each invoice relates no sooner than thirty (30) days and no later than forty-five (45) days following the end of the month following the month in which a properly rendered invoice was received.

(5) Where payment by interim certificate is specified in the Contract the Contractor shall make an application, supported by appropriate documentary evidence, to the Supervising Officer monthly for an Interim Certificate showing the value of all Services completed in accordance with the Contract by the Contractor on the site during the previous month. The Supervising Officer shall, if he is satisfied that such Services/ have been completed in accordance with the Contract, issue an Interim Certificate within 14 days of receipt of the application, certifying payment of the amount which in the Supervising Officer opinion is due to the Contractor under the Contract for such Services. Maltby Colliery shall then pay the Contractor within 46 days of receipt of a request for payment accompanied by the Interim Certificate from the Contractor.

(6) The issue by the Supervising Officer of any certificate under these Conditions of Contract or the payment of any invoice shall be evidence only as to the general sufficiency of the Services/ referred to in the certificate or invoice and shall not be conclusive evidence as to the satisfactory performance by the Contractor of his obligations (including his maintenance obligations) under the Contract nor that the Services (or any part thereof) have been executed in accordance with and comply with the requirements of the Contract.

(7) Maltby Colliery shall be entitled to deduct from the sums due under the Contract (and any other sums) due to the Contractor any sums that the Contractor may owe to Maltby Colliery at any time.

(8) If there is any invoice which is in dispute (whether in whole or part), Maltby Colliery shall be entitled to withhold payment of the relevant invoice in full. The parties shall enter into good faith discussions to resolve such dispute.

(9) If Maltby Colliery fails to make payment to the Contractor of any sums owed, the Contractor may charge interest to Maltby Colliery on such sums at a rate of 2% (two per cent) above the base lending rate from time to time of the Bank of England until such payment has been made. Interest shall not be payable on any unpaid sums under Conditions 7(7) and 7(8) above.

(10) Payment of the price for the Services shall not constitute acceptance by Maltby Colliery of the Services.

8. (1) The Supervising Officer may order the Contractor to vary the extent of the Services. The Supervising Officer shall arrange that the Contractor receives written confirmation of any order varying the Services by a formal variation order or amendment order before the variation comes into effect or as soon as reasonably practicable thereafter. No such variation shall invalidate the Contract.

(2) If the Supervising Officer orders any such variation the amount payable to the Contractor shall be increased or reduced in accordance with the rates and prices stated in the contract or, if no rates or prices are stated, by such amount as is reasonable according to the Services to be performed and the sum stated in the Contract.

(3) The Contractor shall be paid the net additional costs to the Contractor of any overtime required to be worked by Employees in accordance with Condition 6(2) as certified by the Supervising Officer unless the need to work such overtime arose out of any default by the Contractor in the execution of the Contract

9. (1) The Contractor shall indemnify, keep indemnified and hold Maltby Colliery harmless against any and all Loss suffered or incurred by Maltby Colliery arising out of or in connection with the death of or injury to any person or loss of or damage to any property (including without limitation property of Maltby Colliery) to the extent that such death, injury or damage is due to:-

- (a) any breach of contract by the Contractor; or
- (b) any negligence, default or breach of statutory duty on the part of the Contractor or any Employees; or
- (c) any breach of statutory duty on the part of Maltby Colliery to the extent that it results from an act or omission of the Contractor or any Employees.

(2) The Contractor's liability to indemnify Maltby Colliery under Condition 9(1) shall not be affected by any vicarious liability which Maltby Colliery may have in respect of the Contractor or any of the Employees and the Contractor shall indemnify, keep indemnified and hold Maltby Colliery harmless in respect of any and all such vicarious liability.

(3) The Contractor shall not be liable under the provisions of this Condition 9 for any loss of profits or contracts sustained by Maltby Colliery and the liability of the Contractor to indemnify Maltby Colliery against any loss or damage to any property of Maltby Colliery shall be limited to £5,000,000 (Five million pounds) (or such other sum if any as may be specified in the Contract) in respect of any one incident.

(4) The Contractor shall insure his liabilities under this Condition with an insurer and in terms approved by Maltby Colliery and the Contractor shall from time to time if required by Maltby Colliery produce satisfactory evidence that the policy or policies of insurance have been affected and are maintained in force. The Contractor shall ensure that such insurance policy or policies are taken out with reputable insurers acceptable to Maltby Colliery and that the level of cover and other terms of insurance are acceptable to and agreed by Maltby Colliery. If Maltby Colliery approve insurance effected by the Contractor in terms less than his liabilities under this Condition that approval shall not reduce the level of the Contractor's liability under this Condition.

10. (1) The Contractor shall indemnify, keep indemnified and hold Maltby Colliery harmless from and against any and all Loss incurred by Maltby Colliery at any time (whether or not during the period of the Contract) which are attributable to any acts or omissions by the Contractor in respect of any of his obligations or duties to any of his Employees and for which Maltby Colliery becomes responsible by operation of law.

(2) The Contractor undertakes to Maltby Colliery that it will, not less than 5 days prior to the end of the Contract period or, in the event of termination of the Contract in accordance with Condition 12, as soon as practicable after the date of such termination, grant to any contractor appointed to perform the Services in succession to the Contractor an indemnity from and against any Loss incurred at any time by that successor

contractor which are attributable to any acts or omissions by the Contractor in respect of any of the Contractor's obligations or duties to any of the Contractor's Employees and for which the successor contractor becomes responsible by operation of law.

(3) The Contractor undertakes to Maltby Colliery that if, following the end of the Contract Period or, if applicable, the date of termination of the Contract, the employment of any Employee is terminated by a successor contractor at any time after the commencement of that successor contractor's contract, the Contractor shall on demand pay the successor contractor an amount equal to the Redundancy Payment to which the Employee would have been entitled had his employment been terminated by the Contractor by reason of such redundancy with effect from the date of commencement of the successor contract.

(4) The Contractor will on request provide Maltby Colliery (or such other person as Maltby Colliery shall specify) with full details in relation to its Employees, including, without limitation, their terms of employment or engagement.

(5) In this Condition 10, "Redundancy Payment" means (i) any statutory redundancy entitlement of an Employee under the EPCA 1978 and (ii) any notice entitlement (whether contractual or statutory) of the Employee in question or any other contractual entitlement under or in connection with the Employee's contract or terms of employment or engagement.

11.(1)Maltby Colliery may, by giving oral notice confirmed in writing within 24 hours, immediately suspend the Contract (or any order placed under it) in the event of a strike, lockout or for any reason outside the control of Maltby Colliery. In the event of such notice, Maltby Colliery shall not be liable to the Contractor in respect of the period of suspension and shall not be responsible for any plant or equipment remaining on the Site during the period of suspension.

(2)Unless otherwise agreed, the Contractor shall not be entitled to any extension of the Contract Period due to the service of a notice suspending the Contract.

12.(1)Maltby Colliery may terminate the Contract immediately, without prejudice to any other rights of Maltby Colliery, by giving notice in writing to the Contractor in any of the following events:-

(a)If the Contractor fails to perform the Services with due diligence or commits a material breach of any of the terms or Conditions of the Contract or fails to carry out any reasonable orders given to him by the Supervising Officer;

(b) If the Contractor suffers an Insolvency Event. For the purposes of this Clause 12, Insolvency Event shall mean:

(i) the Contractor, irrespective of its status and in any jurisdiction:

(a) suffers actions analogous to those described in Conditions 12 (b) (ii) to 12 (b)(v);

(b) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

(ii) the Contractor, being an individual or a partnership:

(a) suspends, or threatens to suspend, payment of its debts or admits inability to pay its debts or 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;

(b) makes, or proposes to make, an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;

(c) is, or proposes to become, the subject of a bankruptcy petition or order; or

(d) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing its own affairs or becomes a patient under any mental health legislation;

(ii) the Contractor, being a company or limited liability partnership:

(a) has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with its winding up or such other circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in respect of the Contractor;

(b) has an application made to court, or an order made, for the appointment of an administrator, or has a notice of intention to appoint an administrator given by Contractor or its directors or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or has an administrator appointed over it;

(c) has a receiver appointed over any of its assets or undertaking or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Contractor or if any other person takes possession of or sells the Contractor's assets;

(d) has a floating charge holder over its assets becoming entitled to appoint or has an administrative receiver appointed;

(e) makes, or proposes to make, any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;

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

(g) is, or is reasonably considered by Maltby Colliery to be, unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986 (on the basis that the words "it is proved to the satisfaction of the court that" are deemed omitted from sections 123(1)(e) and 123(2) of that Act);

(iii) any restraint is levied against the Contractor or its property by any third party provided always that such event is material in nature and not remedied or corrected within a reasonable period of time;

(iv) 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 against, the whole or any part of its assets and such attachment or process is not discharged within a reasonable period of time; or

(v) Maltby Colliery, acting reasonably, has serious doubts as to the Contractor's solvency.

(2) If the cost of completing the Services following termination in accordance with Condition 12(1) exceeds the amount which would have been payable to the Contractor for the Services, the Contractor shall pay the excess to Maltby Colliery.

(3)Without prejudice to the provisions of Condition 12(1) and subject to the following provisions of this Condition, Maltby Colliery may terminate the Contract in any event on 7 days notice to the Contractor. On termination under this Condition 12, Maltby Colliery shall pay the Contractor for all Services executed up to the date of termination but shall have no further liability to the Contractor provided that, if less than 7 days notice to terminate is given by Maltby Colliery, the Contractor shall be paid such amount as would have been earned during a full notice period of 7 days.

(4) If any of the events outlined in Condition 12(1)(a) and 12(1)(b) occur then as an alternative to termination Maltby Colliery may choose at their discretion to continue carrying out the Services or any part thereof using their own workmen or other contractors. Any such suspension of the Services shall be notified to the Contractor by the Supervising Officer and shall last until the Contractor satisfies Maltby Colliery that the Services can be carried out in accordance with the Contract. Any excess costs incurred by Maltby Colliery shall be charged to the Contractor in line with Condition 12(2).

(5) In the event that Maltby Colliery terminating or suspending the Contract in accordance with Condition 12(1) and 12(4) Maltby Colliery shall have the right to utilise any plant and equipment at the site belonging to the Contractor for the purpose of ensuring the Services are not interrupted, without being liable for fair wear and tear or loss or damage to the plant and equipment except as provided in Condition 9.

13. Whenever under the Contract any sum of money is recoverable from or payable by the Contractor, the same may be deducted from or reduced by the amount of any sum then due or which at any time may become due to the Contractor under the Contract or any other dealing with Maltby Colliery.

14. Notwithstanding anything to the contrary stated in the Contract, the Contractor shall not be entitled to claim from Maltby Colliery any extension of time or other relief from the obligations imposed by the Contract or reimbursement of any extra costs or losses incurred as a result of any industrial dispute arising from:-

(a) the engagement by the Contractor or any sub-contractor engaged upon the Services at any premises owned or occupies by Maltby Colliery of Employees who are not members of a certified Independent Trade Union, or

(b) any attempt to deliver goods to or collect goods from any such premises by the use of non-union labour employed by the Contractor or any sub-contractor, supplies or carrier engaged on the Services.

15. The Contractor shall not, without the previous written consent of Maltby Colliery, publicly announce or advertise in any form that it supplies services to Maltby Colliery.

16. All information, written or otherwise, provided by Maltby Colliery in connection with the Contract shall be treated by the Contractor as confidential and its use shall be confined to the Contractor and to his Employees properly engaged in the execution of the Contract (except so far as confidential disclosure to sub-contractors or suppliers is necessary in the performance of the Contract) and to the purposes of the Contract. All documents and written information (including drawings, plans, photographs, specifications and computer programmes/record) which are provided to the Contractor by Maltby Colliery shall be returned to Maltby Colliery without delay upon the termination of the Contract.

17. If the Contractor or a person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) corruptly offers, gives, or agrees to give to any person a gift or consideration of any kind as an inducement to reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract, or any other contract with Maltby Colliery, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with Maltby Colliery, or if in relation to any contract with Maltby Colliery the Contractor or a person employed by him or acting on behalf (whether with or without the knowledge of the Contractor) commits an

offence under the Prevention of Corruption Acts 1889 - 1916, Maltby Colliery shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination.

18(1) The Contractor shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of Maltby Colliery.

(2) The Contractor shall not sub-contract the execution of the whole or any part of the Services without the prior written consent of Maltby Colliery. Such consent shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults and neglect of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglect of the Contractor.

19. The Contractor shall at his expense observe and perform the Works in accordance with all reasonable standards of safety and comply with Maltby Colliery's health and safety procedures from time to time in force, including without limitation the conditions and requirements concerning health and safety and other matters contained or referred to in Maltby Colliery document "Scope and Requirements Health and Safety Provisions - Pre mobilisation document" (or any such later revision of that document as Maltby Colliery may issue from time to time) and all other instructions given by the Supervising Officer or the Manager in connection with the safe execution of the Services and the operation of the Site and shall report to Maltby Colliery any unsafe working conditions or practices.

20(1) Any written notice to be served under these Conditions of Contract shall be sent by first class post, telex or facsimile or left at, in the case of a notice to be sent to Maltby Colliery, the address from which Maltby Colliery letter of acceptance or order was sent, in the case of a notice to be sent to the Contractor, the registered office or the last known business address of the Contractor.

(2) Any notice sent under this Condition shall be deemed to have been served as follows:-

(a) in the case of a notice by telex, facsimile or delivery by hand the first business day following transmission or delivery; and

(b) in the case of a notice sent by first class post on the second business day after the day on which it was posted.

(3) For the purpose of this Condition, the expression "business day" means any day other than a Saturday, Sunday or any other day which is a public holiday in the place to which such notice is sent or left.

21 (1) The Contractor shall:-

(a) Observe and at his own expense fully comply with the Duty of Care contained in section 34 of the Environmental Protection Act 1990 and the Special Waste Regulations 1996 and amendments and any relevant Regulations (the Regulations) or Code of Practice (the Code) issued in relation to them.

(b) In particular:

i) ensure any controlled waste is only carried by a Registered Waste Carrier or a carrier exempted from registration;

ii) ensure that on transfer to any controlled waste there is a transfer note and a full description in accordance with the requirements of the Regulations and the Code;

iii) ensure that controlled waste is disposed of by the holder of the disposal or waste management licence or used for a purpose exempted by the Regulations of the need for one of the said licences;

iv) ensure that his employees, and/or agents and subcontractors and their respective employees and agents comply with the requirements of this special condition.

(c) Notify Maltby Colliery of any prosecution or intended prosecution and/or of any notification of breach of the Code in respect of himself, his employees or agents or any of his subcontractors or their respective employees or agents which affects or may affect the performance of the Contract.

(d) Allow Maltby Colliery to inspect any records, disposal or waste management licences, transfer note, description or any other document required under the Regulations or Code.

(2)The Contractor shall indemnify, keep indemnified and hold Maltby Colliery harmless against any and all delays and Loss arising from:-

i) a breach of the Duty of Care by either himself or his employees or agents or his subcontractors and their respective employees or agents;

ii) any breach of statutory duty on the part of Maltby Colliery to the extent it results from an act or omission of the Contractor or subcontractor or their respective servants or agents.

(3) Maltby Colliery shall have the right at any time by giving notice in writing to the Contractor to terminate the Contract forthwith in the event of the Contractor committing any breach (be it material or otherwise) of any of the terms of this Condition 21.

22 Unless otherwise indicated by Maltby Colliery in the invitation to tender, all scrap and/or redundant material/equipment arising out of the Contract shall remain the property of Maltby Colliery. The Contractor must stack any such material/equipment in a position as directed by the Supervising Officer.

23 The Contractor and must ensure that their Employees receive:

i) a minimum of 20 days paid holiday per annum; and

ii) Statutory Holiday Pay

The cost of the above shall be deemed to be included in the Contractor's rates and prices. Maltby Colliery reserves the right to inspect the Contractor's records at any reasonable time to ensure compliance.

24 (1) The Contractor will ensure that the contents of these Conditions of Contract where relevant are brought to the attention of his employees and agents and of the Employers and agents of his sub-contractors.

(2) If any provision of the Contract is held by any court or other competent authority to be void or unenforceable (in whole or part), the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

(3) The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.

(4) The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

(5) Except as provided in Condition 8, no variation of the Contract shall be binding upon the parties unless the same shall be in writing signed by a duly authorised representative of both the Maltby Colliery and the Contractor and such variation shall be particular to the circumstances mentioned by such writing and shall not be regarded as a general variation.

(6) Other than members of the Hargreaves Group, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. Maltby Colliery may perform any of its obligations or exercise any of its rights hereunder through any member of the Hargreaves Group. Notwithstanding that members of the Hargreaves Group shall be entitled to enforce certain rights under this Contract which have been given for their benefit, the parties to this Contract may enter into any agreement or arrangement varying or amending any of the terms of this Contract, or compromising or settling any claim under this Contract (including in respect of such rights), without reference to the interests of, or the consent of, the other members of the Hargreaves Group not party to this Contract.

(7) The Contractor warrants to the Maltby Colliery that to the extent it processes any Personal Data in connection with the provision of the Services, it shall comply with the provisions of the Data Protection Act 1998.

25. The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of England, and the English courts shall have exclusive jurisdiction in all matters relating to this Contract (whether of a contractual or tortious nature or otherwise).

JUNE 2011