



**LIVERPOOL  
CITY REGION**  
COMBINED AUTHORITY

**METROMAYOR**  
LIVERPOOL CITY REGION

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**STRATEGIC INVESTMENT FUND**

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**Dated**

**2020**

**Liverpool City Region Combined Authority**

**- and -**

**[ ]**

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**Dig Once Digital Infrastructure -**

**Collaboration Agreement for**

**[Dig Once Project]**

**SIF2092**

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Liverpool City Region Combined Authority  
Jill Coule  
Chief Legal Officer and Monitoring Officer  
No.1 Mann Island  
Liverpool L3 1BP  
Ref: RSN20587



THIS AGREEMENT is dated

2020

**Parties:**

- (1) **LIVERPOOL CITY REGION COMBINED AUTHORITY** of No.1 Mann Island, Liverpool, L3 1BP (“the LCRCA”); and
- (2) [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ] (“the Contracting Authority”)

(each a “Party” and together the “Parties”).

**Background**

- (A) The LCRCA has adopted the Dig Once Programme (defined below).
- (B) Under the LCRCA’s Strategic Investment Fund (SIF) process £6.39m has been made available to achieve the objectives and outputs of the Dig Once Programme.
- (C) The Contracting Authority is proposing to undertake a works project in the Liverpool City Region that falls within the objectives of the Dig Once Programme.
- (D) The Contracting Authority has submitted to the LCRCA and the LCRCA has approved a Dig Once Project Profile Form and the LCRCA agrees to pay the Contracting Authority for the provision of the Dig Once Project Services under the terms of this Agreement.

**Agreed terms**

**1. Definitions and Interpretation**

1.1 In this Agreement the following terms shall have the following meanings:

**Business Day:** means a day, other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the maximum sum payable by the LCRCA to the Contracting Authority for the Dig Once Project Services as such sum is set out in the Dig Once Project Profile Form attached at Schedule 1;

**Contracting Authority Works:** a works project in the Liverpool City Region to be undertaken by the Contracting Authority and that aligns with the objectives of the Dig Once Programme.

**Dig Once Inspection and Sign-Off Form:** a form as set out in Schedule 2.

**Dig Once Inter-Authority Agreement:** the agreement entered into or due to be entered into which the LCRCA and the Contracting Authority, together with other contracting authorities within the Liverpool City Region, are parties to and which sets

out the general principles upon which this Agreement has been entered into between the LCRCA and the Contracting Authority and the other contracting authorities.

**Dig Once Programme:** the installation of digital infrastructure (ducts, chambers and other associated equipment) at the same time as a Contracting Authority undertakes highway or other works, and in so doing, save money, time and disruption.

**Dig Once Project Profile Form:** the Contracting Authority's Dig Once Project profile form providing details of the Dig Once Works as set out in Schedule 1.

**Dig Once Project Services:** the procurement, the project management and ancillary services provided by the Contracting Authority to the LCRCA under this Agreement.

**Dig Once Works:** the works described in the Dig Once Project Profile Form attached at Schedule 1 in relation to the Dig Once Programme to be delivered under the terms of this Agreement to the LCRCA by the Contracting Authority as part of the Contracting Authority Works.

**Losses:** all damages, losses, liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgements, consensual settlements, penalties, fines, demands, interest and charges whether arising under statute, contract or at common law.

**Works Contract:** the contract for the provision of the Contracting Authority Works under which the Work Contractor will deliver, inter alia, the Dig Once Works.

**Works Contractor:** the third party or third parties procured by the Contracting Authority to undertake, inter alia, the Dig Once Works.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this **Agreement** includes the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to any **Party** shall include that Party's personal representatives, successors and permitted assigns.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 Save for the service legal proceedings or notices of termination of this Agreement a reference to **writing** or **written** includes fax and email.
- 1.9 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 Where there is a conflict between the terms and conditions of this Agreement and the Dig Once Inter-Authority Agreement or the Works Contract such conflict (so far as it relates to the interpretation of this Agreement only) shall be determined in accordance with the following order of precedence:
- i. this Agreement; and
  - ii. the Dig Once Inter-Authority Agreement;
  - iii. the Works Contract.

## **2. Dig Once Project Services**

- 2.1 The Contracting Authority shall:
- (a) deliver the Dig Once Project Services;
  - (b) deliver, and procure that any Works Contractor shall deliver, the Dig Once Works in accordance with this Agreement unless agreed otherwise in writing by the LCRCA;
  - (c) procure that the Works Contractor instructed to carry out all or any part of the Dig Once Works is suitably skilled, qualified and experienced to carry out the tasks that they are instructed to perform and hold a sufficient level of insurance to cover any risks or Losses that may arise in relation to those tasks. The Contracting Authority will provide evidence of the Works Contractor's skills, qualifications, experience and insurance cover to the LCRCA upon its reasonable request;
  - (d) as soon as possible notify the LCRCA in writing of any early warning of a compensation event or notification of a proposed variation it receives from the project manager of the Works Contract in relation to any circumstance that could affect the completion, progress, quality or cost of the installation of any Dig-Once Works.

## **Installation and Inspection**

### 2.2 The Contracting Authority:

- (a) Shall carry out, as reasonably requested by the LCRCA, inspections of the materials, works and testing of the Dig Once Works during the period of its delivery;
- (b) shall, and shall procure that the Works Contractor shall, grant to the LCRCA and its authorised agents the right of access upon reasonable prior notice and provide all reasonable assistance to enable inspection of the materials, works and testing of the Dig Once Works during the period of its delivery;
- (c) with respect to any remedial items identified during inspection of the Dig Once Works under clause 2.2(b) above, shall procure that the Supplier shall properly rectify them to the LCRCA's reasonable satisfaction;

## **Dig Once Works Defects Liability Period and Warranties**

### 2.3 The Contracting Authority shall:

- (a) insofar as reasonably practicable, procure that that the Works Contractor shall execute a collateral warranty for the benefit of the LCRCA in respect of the Dig Once Works in a form reasonably specified by the LCRCA;
- (b) where unable to procure the execution of the collateral warranty described in clause 2.3(a) above, it shall hold on trust for the sole benefit of the LCRCA, the benefit of the defects liability period and all warranties and indemnities provided by the Works Contractor under the Works Contract in respect of the Dig Once Works and as specified in the Project Profile Form;
- (c) where any such warranties are held on trust, at the LCRCA's cost enforce such warranties in accordance with any reasonable directions that the LCRCA may notify from time to time to the relevant Contracting Authority;
- (d) unless it is legally incapable of doing so, assign to the LCRCA on the LCRCA's written request and at the cost of the LCRCA any such warranties and/or indemnities as are referred to in clause 2.3(b) above.

## **3. Title and Risk**

- 3.1 Without prejudice to any other rights or remedies of the LCRCA the legal and beneficial ownership of and risk and liabilities arising from (unless otherwise agreed) the Dig Once Works installed under a Works Contract shall pass immediately to the LCRCA on the date of practical completion under the respective Works Contract for the installation of such assets.

- 3.2 Each Contracting Authority shall procure that terms are included in its respective Works Contract with its Supplier to give effect to clause 3.1 above and shall provide the LCRCA promptly with written evidence of such transfer of ownership and risk to the LCRCA.
- 3.3 Prior to the point at which title to the assets passes to the LCRCA under clause 3.1 above the assets shall be at the risk of the Contracting Authority or the Supplier as agreed between them and the Contracting Authority shall ensure that appropriate all risks insurance cover is maintained in respect of the assets.
- 3.4 On the point at which title and risk to the assets passes to the LCRCA under clause 3.1 above the assets shall be at the risk of the LCRCA which shall be responsible for ensuring that insurance cover is maintained in respect of the assets.

#### **4. Repair and Maintenance**

- 4.1 Subject to clauses 2.3(a) to (c) above (where the Works Contractor shall be responsible), or as otherwise agreed with a Contracting Authority, from the point that title and risk in the assets passes to the LCRCA under clause 3 above the LCRCA shall be responsible for the repair and maintenance of the assets.

#### **5. Access and Wayleave**

- 5.1 Each Contracting Authority shall, where required by the LCRCA, enter into an industry standard wayleave substantially in the form as set out in Schedule 3 allowing the LCRCA or its agents access to land to perform its repair and maintenance obligations under clause 4.
- 5.2 If the LCRCA and the Contracting Authority have not entered into the wayleave as set out in clause 5.1 above then the Contracting Authority shall nevertheless permit the LCRCA or its agents access to land to perform its repair and maintenance obligations under clause 4.

#### **6. Payment of Charges**

- 6.1 Unless otherwise set out in the Project Profile Form payment of the Charges shall be made within 30 calendar days of:
- (a) signature by both Parties of the Dig Once Inspection and Sign-Off Form in the form set out in Schedule 2; and
  - (b) receipt by the LCRCA from the Contracting Authority an invoice and evidence that the costs relating to the Dig Once Works have been paid by the Contracting Authority.

## **7. Accounts and records**

- 7.1 The Contracting Authority shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Charges.
- 7.2 The Contracting Authority shall keep all invoices, receipts, and accounts, and any other relevant documents, relating to the expenditure of the Charges for a period of at least six years following the day on which the final payment in respect of the Charges is made. The LCRCA shall have the right to review, at the LCRCA's reasonable request, the Contracting Authority's records that relate to the Charges.

## **8. Warranties**

- 8.1 The Contracting Authority represents and warrants that:
- a) in procuring the Works Contractor to undertake the Dig Once Works, the Contracting Authority has complied with all applicable law, including the Public Contract Regulations 2015;
  - b) it has full capacity and authority to deliver the Dig Once Works including procuring the services of the Works Contractor to undertake the Dig Once Works;
  - c) in relation to the Dig Once Works, it has and will continue to comply with any applicable law, guidance or industry code, rule of court or directives or requirements of any regulatory body;
  - d) it has obtained and will continue to have any consents or approvals, and has the resources and expertise necessary to deliver the Dig Once Works and procure the services of the Works Contractor to undertake the Dig Once Works, and to comply with the terms of this Agreement;
  - e) it has disclosed in writing to the LCRCA all information which might materially and adversely impact on the Contracting Authority's ability to deliver the Dig Once Works, including procuring the services of the Works Contractor to undertake the Dig Once Works, or complying with the terms of this Agreement; and
  - f) the information and evidence in, and relating to or disclosed to the LCRCA in relation to the Dig Once Works, remain true, complete and accurate, and that it will advise the LCRCA of any fact, matter or circumstance which would render any such information or evidence false or misleading.

## **9. Duration**

- 9.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the later of the date of the final payment of the Charges and the date on which all obligations under this Agreement are fulfilled to the satisfaction of the LCRCA.



- 9.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

## **10. Intellectual property**

- 10.1 The LCRCA and the Contracting Authority agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights (“the Intellectual Property Rights”) owned by either Party before the start of the Dig Once Works or developed by either Party for or as part of the Dig Once Works shall remain the property of that Party.
- 10.2 The Contracting Authority hereby grants to the LCRCA an irrevocable royalty free, non-exclusive licence to use any Intellectual Property Rights created in whole or in part in connection with the provision of the Dig Once Services.

## **11. Termination**

- 11.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 11.2 The LCRCA may terminate this Agreement and any obligation to make any further payment under it on giving the Contracting Authority one month’s written notice should it be required to do so by financial restraints or a change in legislation or Government policy.

## **12. Consequences of Termination**

- 12.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 12.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

### **13. Limitation of liability**

- 13.1 Subject to any amendment to this clause as set out in the Project Profile Form the LCRCA accepts no liability for any consequences or Losses, whether arising directly or indirectly, that may arise in connection with:
- (a) The Contracting Authority operating and managing the Works Contract or the Dig Once Works;
  - (b) the Contracting Authority's procurement, and the Works Contractor's performance, of the Works Contract; and/or
  - (c) termination of this Agreement in accordance with clause 11 save that any Charges directly incurred by the Contracting Authority up to the date of termination shall be paid by the LCRCA to the Contracting Authority.
- 13.2 Save in respect of any liabilities that cannot be lawfully limited, the LCRCA's liability to the Contracting Authority under this Agreement is limited to:
- (a) the obligation to make payment of the Charges when due and payable; and
  - (b) the obligation to assume ownership of the Dig Once Works assets in accordance with clause 3 above and responsibility for repair and maintenance under clause 4 above and, in each case, the obligation, risks and liabilities arising therefrom.
- 13.3 The Contracting Authority shall indemnify and hold harmless the LCRCA, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the negligent actions and/or omissions of the project manager engaged by the Contracting Authority (either from internal personnel or by external appointment) in relation to the Dig Once Works, the non-fulfilment of obligations of the Contracting Authority under the Works Contract or this Agreement or its obligations to third parties.
- 13.4 The LCRCA shall indemnify and hold harmless the Contracting Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of a breach of contract or the negligent actions and/or omissions of the LCRCA in relation to the Dig Once Works or this Agreement.
- 13.5 Nothing in this agreement shall exclude or limit any Party's liability for death or personal injury caused by its negligence or any other liability which cannot be limited or excluded by law.

## **14. Insurance**

14.1 Each of the Contracting Authority and the LCRCA shall ensure that it has adequate insurance cover (including public liability insurance) in place with an insurer of good repute to cover all claims and liabilities under or in connection with this Agreement and the Contracting Authority shall provide evidence of such insurance to the LCRCA on request and the LCRCA shall provide evidence of such insurance in response to such request from a Contracting Authority.

## **15. Assignment etc.**

15.1 The Contracting Authority may not, without the prior written consent of the LCRCA, assign, novate, sub-contract or otherwise transfer the benefit and/or the burden of this Agreement.

## **16. Variation**

16.1 Any variation to the terms of this Agreement shall be agreed in writing between the Parties and shall take effect following execution by the Parties of a valid deed of variation or other written instrument appropriate to the variation.

## **17. Freedom of information**

17.1 Each Party acknowledges that the other is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and each Party shall assist and co-operate with the other to enable it to comply with these requirements.

## **18. Data protection**

18.1 Each Party shall (and shall procure that any of its staff or contractors involved in connection with the activities under this Agreement shall) comply with all applicable requirements and all of its obligations under the Data Protection Act 2018, General Data Protection Regulation (EU 2016/679) and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation, which arise in connection with this Agreement.

## **19. Confidentiality and Publicity**

19.1 The Contracting Authority shall not publish any material referring to the Dig Once Works or this Agreement without the prior written agreement of the LCRCA. Each Party shall during the term of this Agreement and thereafter keep secret and confidential all business, technical or commercial information disclosed to it by the other Party as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement, to meet any legal

or regulatory requirements or as expressly authorised in writing by the other Party.

**20. Notices**

20.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given personally delivered or mailed (first class postage prepaid), to the address of the relevant Party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-Business Day or after 5.00 pm on any Business Day they shall be deemed received on the next Business Day) and if mailed all such communications shall be deemed to have been given and received on the second Business Day following such mailing.

**21. No partnership or agency**

21.1 This Agreement shall not create any partnership or joint venture between the LCRC and the Contracting Authority, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

**22. Waiver**

22.1 No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

**23. Counterparts**

23.1 This Agreement may be signed in any number of counterparts, each of which when signed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute a single agreed Agreement. Transmission of a signed counterpart of this Agreement by email in PDF format shall take effect as delivery of a signed counterpart of this Agreement.

**24. Costs**

24.1 Each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this agreement and any documents referred to in it.

**25. Third party rights**

25.1 This Agreement does not and is not intended to confer any contractual rights or benefits on any person for the purposes of the Contracts (Rights of Third Parties) Act 1999.

## 26. Dispute resolution

- 26.1 Insofar as this Agreement is a construction contract as defined in the Housing, Grants, Construction and Regeneration Act 1996 (the Act) it shall be governed by the Act in particular with regard to adjudication.
- 26.2 Subject to clause 26.1 above, if a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided otherwise in this agreement, the Parties shall follow the dispute resolution procedure set out in this clause:
- (a) a Party to the Dispute shall give to the other Party written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the LCR Dig Once Programme Director of the LCRCA and the Director of the Dig Once Project Team of the Contracting Authority shall attempt in good faith to resolve the Dispute;
  - (b) if the LCR Dig Once Programme Director of the LCRCA and the Director of Project Team of the Contracting Authority are for any reason unable to resolve the Dispute within ten Business Days of service of the Dispute Notice, the Dispute shall be referred to the LCRCA's Senior Responsible Officer for the LCR Dig Once Programme and the Chief Executive of the Contracting Authority who shall attempt in good faith to resolve it; and
  - (c) if the LCRCA's Senior Responsible Officer for the LCR Dig Once Programme and Chief Executive of the Contracting Authority are for any reason unable to resolve the Dispute within 15 Business Days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR Notice**) to the other Party requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation shall start not later than 30 Business Days after the date of service of the ADR Notice. Unless otherwise agreed by the Parties, CEDR, in conjunction with the mediator, shall make the necessary arrangements for the mediation including:
    - (i) nominating, and obtaining the agreement of the Parties to, the mediator;
    - (ii) organising a suitable venue and dates;
    - (iii) organising exchange of documents;
    - (iv) meeting with the Parties (and the mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
    - (v) general administration in relation to the mediation.

26.3 No Party may commence any court proceedings in relation to any dispute arising out of this agreement until 60 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay in appointment. Nothing in this clause shall be construed as prohibiting a Party from applying to a court for interim injunctive relief.

**27. Law and jurisdiction**

27.1 This Agreement shall be governed by and construed in accordance with the law of England, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England.

**28. Entire agreement**

28.1 This Agreement and any document referred to herein constitutes the entire agreement between the Parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule 1**

**The Dig Once Project Profile Form**

**Schedule 2**

**Dig Once Inspection and Sign Off-Form**



**Schedule 3**

**Industry Standard Wayleave**

**EXECUTED as a DEED by**  
**LIVERPOOL CITY REGION**  
**COMBINED AUTHORITY**

in the presence of:

.....

Authorised Signatory

**EXECUTED as a DEED by**  
**THE CONTRACTING AUTHORITY**

in the presence of:

.....

Authorised Signatory