

**AMEY TEMPLATE  
NEC4 TERM SERVICE SUBCONTRACT**

**(1) AMEY HIGHWAYS LIMITED**

**(2) [SUBCONTRACTOR ENTITY]**

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**SUBCONTRACT AGREEMENT  
TERMS & CONDITIONS  
For NEC4 Term Service Subcontract June 2017  
edition incorporating amendments**

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**THIS AGREEMENT** is made by way of a deed on the \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

**BETWEEN:**

1. **AMEY HIGHWAYS LIMITED** , a company incorporated under the Companies Acts (company number 06600609) whose registered office is at Chancery Exchange, 10 Furnival Street, London, United Kingdom, EC4A 1AB (the "**Contractor**"); and
2. **[identify subcontractor]**, a company incorporated under the Companies Acts (company number **[insert company number]**) whose registered office is at **[insert registered office of subcontractor]** (the "**Subcontractor**").

**OPERATIVE PROVISIONS:**

1. **General Agreement and Obligations:** The Parties hereby agree that in consideration of payment by the *Contractor* to the *Subcontractor* of the sum or sums which shall become payable in accordance with this subcontract, the *Subcontractor* shall, upon and subject to the subcontract and the provisions of the Main Contract, carry out and complete the *subcontract service* shown, described and/or referred to in the Subcontract Documents and the Main Contract in strict accordance with the requirements thereof.
2. **Subcontract Documents:** The Subcontract Documents comprise:
  - 3.1 this Subcontract Agreement;
  - 3.2 the Subcontract Data parts one to three set out in Schedule 1;
  - 3.3 the NEC4 Term Service Subcontract Conditions (June 2017 Edition) as modified and supplemented in the manner indicated in Schedules 1 and 2 hereto;
  - 3.4 the *numbered documents*.

**EXECUTED AND DELIVERED AS A DEED** by the Parties on the date which first appears in this Deed.

**EXECUTED AND DELIVERED AS A DEED** by the **CONTRACTOR** acting by:

.....  
Director ..... (signature)

.....  
Director / Company Secretary / Witness ..... (signature)

Address (if witness) .....  
.....

**EXECUTED AND DELIVERED AS A DEED** by the **SUBCONTRACTOR** acting by:

.....  
Director ..... (signature)

.....  
Director / Company Secretary / Witness ..... (signature)

Address (if witness) .....  
.....

## SCHEDULE 1 - SUBCONTRACT DATA

### Part One – Data provided by the Contractor

#### Statements given in all subcontracts

##### 1. General

- The *conditions of subcontract* are the core clauses and the clauses for main Option (select **one**):

A:	Priced subcontract with price list	<input type="checkbox"/>
B:	Priced contract with bill of quantities	<input type="checkbox"/>
C:	Target subcontract with price list	<input type="checkbox"/>
E:	Cost reimbursable subcontract	<input type="checkbox"/>

dispute resolution Option W2 and the following secondary Options (select **all that apply**);

X1:	Price adjustment for inflation (used only with Options A and C)	<input checked="" type="checkbox"/>
X2:	Changes in the law	<input checked="" type="checkbox"/>
X3:	Multiple currencies (used only with Option A)	<input type="checkbox"/>
X4:	Ultimate holding company guarantee	<input type="checkbox"/>
X8:	Undertakings to the <i>Client</i> or Others	<input type="checkbox"/>
X9:	Transfer of rights	<input type="checkbox"/>
X10:	Information modelling	<input type="checkbox"/>
X11:	Termination by the <i>Contractor</i> (not used with Option X19)	<input type="checkbox"/>
X12:	Multiparty collaboration (not used with Option X20)	<input type="checkbox"/>
X13:	Performance Bond	<input type="checkbox"/>
X17:	Low service damages	<input checked="" type="checkbox"/>
X19:	Termination by either Party (not used with Option X11)	<input type="checkbox"/>
X20:	Key Performance Indicators (not used with Option X12)	<input checked="" type="checkbox"/>
X21:	Whole life cost	<input type="checkbox"/>
X23:	Extending the Subcontract Service Period	<input checked="" type="checkbox"/>
X24:	The <i>accounting periods</i>	<input checked="" type="checkbox"/>

and Y(UK)2 and Z of the NEC4 Term Service Subcontract (June 2017 Edition) . <sup>1</sup>

- The *service* in the Main Contract is described in Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*).
- The *subcontract service* is [REDACTED].
- The *Contractor* is identified in the Subcontract Agreement.
- The *Client* and the *Service Manager* in the Main Contract, are the same as in Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*).
- The Affected Property is The road network to which the *subcontract service* relates
- The Subcontract Scope is in Numbered Document 1 (*Subcontract Scope*).

<sup>1</sup> Note: Y(UK)2 is not referred to here as it is dealt with at Clauses 50-59A.

- The *shared subcontract services* which may be carried out outside the Service Areas are not applicable
- The *language of this subcontract* is English.
- The *law of the subcontract* is the law of England and Wales.
- The period for reply by the *Contractor* is the period for reply by the *Client* in the Main Contract (which is described in Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*), plus one week.
- The period for reply by the *Subcontractor* is the period for reply by the *Contractor* in the Main Contract (which is described in Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*), less one week.
- The following matters will be included in the Early Warning Register:
  - [REDACTED]
  - Early warning meetings are to be held at intervals no longer than [REDACTED]

## 2. The *Subcontractor's* main responsibilities

### Sensitive Services

- The parts of the subcontract service which are *sensitive services* are as follows:  
not applicable

### If Option C or E is used

- The *Subcontractor* prepares forecasts of the total Defined Cost for the whole of the *subcontract service* at intervals no longer than [4 weeks ]

### Failure by subsubcontractors to provide warranties

- Clause 27C.4 does not apply

## 3. Time

- The *subcontract starting date* is [REDACTED]
- The *subcontract service period* is [REDACTED]
- The *Subcontractor* submits revised plans at intervals no longer than 4 weeks.
- The period within which the *Subcontractor* is to submit a Task Order programme for acceptance is 1 week

### If no plan is identified in part two of the Subcontract Data

- The period after the Subcontract Date within which the *subcontractor* is to submit a first plan for acceptance is [3 weeks.
- The *Subcontractor* submits the information in the format required, and at intervals, as follows:

Category of information	Format to be provided
Revised plan	[ ] <sup>2</sup>
[ ]	[ ]
[ ]	[ ]

#### 4. Quality Management

- The period after the Subcontract Date within which the *Subcontractor* is to submit a quality policy statement and quality plan is 4 weeks

#### 5. Payment

- The *currency of the subcontract* is the Pound Sterling.
- The *interest rate* is 3% per annum above the base rate of the Bank of England.
- The first Assessment Date is [ ].

If no date is specified, the first Assessment Date shall be the first day of the next calendar month following substantial commencement of the *subcontract services*.

- The *specified person* is [ ]<sup>3</sup> or such other person or persons as may be notified to the *Subcontractor*, in writing, as the "*specified person*" from time to time.
- The *specified number of days* shall be as follows:

Due Date (clause 51.6): [ ] days after the relevant Assessment Date

Final Date for Payment (clauses 51.7 and 59A.2): [ ] days after the relevant Due Date

- A *payment platform* (e.g. SAP) is [applicable / not applicable]. If a payment platform is applicable, the payment platform is: [ ].

##### If Option B is used

- The bill of quantities is derived from the Price List items multiplied by the quantity required.
- The method of measurement is the Method of Measurement of Highways Works with amendments as set out in the preambles to the Price List.

##### If Option C is used

- The *Subcontractor's share percentages* and the *share ranges* are [ ].
- The *Subcontractor's share* is assessed on (dates) [ ].

##### If Option C or E is used

<sup>2</sup> Specify data format: e.g. Microsoft Excel spreadsheet

<sup>3</sup> Note: insert relevant Amey representative(s) OR to the extent that the specified person is someone outside Amey with authority to issue notices in relation to payment matters, e.g. an employer's agent or joint venture partner, this person should be listed here

- The *exchange rates* are those stated in the Main Contract (see Numbered Document 7 (*Main Contract Data and amendments to Main Contract conditions (if any)*)).
- The following are additional Disallowed Costs:<sup>4</sup>
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]

## 6. Compensation events

### If Option A is used

- The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is [REDACTED]<sup>5</sup>.

### If there are additional compensation events

- There are no additional compensation events

## 8. Liabilities and insurance

### If there are additional Client's liabilities

- These are the additional *Client's* liabilities
  - Not applicable

### If there are additional Contractor's liabilities

- These are the additional *Contractor's* liabilities
  - not applicable .
- The minimum amount of cover for insurance against loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Subcontractor*) arising from or in connection with the *Subcontractor* Providing the Subcontract Service for any one event is the same as in the Main Contract (see Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*))
- The minimum amount of cover for insurance against death of or bodily injury to employees of the *Subcontractor* arising out of and in the course of their employment in connection with this subcontract for any one event is the same as in the Main Contract (see Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*))

### If the *Client* or *Contractor* is to provide Plant and Materials

<sup>4</sup> Note: additional Disallowed Costs can be specified here. Where the Main Contract also uses Option C or E, any additional Disallowed Costs set out in the Main Contract should be replicated here.

<sup>5</sup> Consider on a case by case basis whether value engineering should apply, and if so ensure it is aligned with any equivalent provisions in the Main Contract.



- The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Client* or *Contractor* for an amount of [ ]

**If the *Client* or *Contractor* is to provide any of the insurances stated in the Insurance Table**

- The *Client* or *Contractor* provides these insurances from the Insurance Table

1) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ].

2) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ].

3) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ].

**If additional insurances are to be provided**

- The *Client* or *Contractor* provides these additional insurances:

1) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ].

2) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ].

3) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ].

- The *Subcontractor* provides these additional insurances

1) Professional indemnity insurance

Level of cover required is £[ ] or if not so stated a minimum of £10 million  
(**select one**):

- for any one claim or series of claims arising out of one event [ ]

- aggregate per annum

The expiry of the required period of professional indemnity insurance shall be 12 years from the end of the Service Period under the Main Contract.

2) Insurance against

Minimum amount of cover is

3) Insurance against

Minimum amount of cover is

- Copies of the *Subcontractor's* Insurance details to be presented to the *Contractor* before commencement on Site (select all that apply):

Third Party/Public Liability	<input checked="" type="checkbox"/>
Clients Liability	<input checked="" type="checkbox"/>
Professional Indemnity	<input checked="" type="checkbox"/>
<i>Contractors</i> All Risks	<input checked="" type="checkbox"/>
Other	<input checked="" type="checkbox"/>

- If **Other** specify

Motor vehicle insurance

#### **Insurances by the *Client* or the *Contractor***

The amount of the excess to be paid by the *Subcontractor* for purposes of clause 86.4 is

#### **Resolving and avoiding disputes**

- The *tribunal* is the courts of England and Wales
- The *Senior Representatives* of the *Contractor* are
  - Name (1):
  - Address for communications:
  - Address for electronic communications:
  - Name (2):
  - Address for communications:
  - Address for electronic communications:
- The *Adjudicator* in the subcontract is
  - Name:  is the person chosen by the Client and the Contractor from the list of adjudicators published by the Institution of Civil Engineers

- Address for communications: [ ]
- Address for electronic communications: [ ]
- The *main contract Adjudicator* is
  - Name: is the person chosen by the Client and the Contractor from the list of adjudicators published by the Institution of Civil Engineers
  - Address for communications: [ ]
  - Address for electronic communications: [ ]
- The *Adjudicator nominating body* is the same nominator as that named in the Main Contract (Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions (if any)*)). If no nominator is so named the nominator shall be the President or a Vice-President of The Royal Institution of Chartered Surveyors (or, if this subcontract is governed by Scottish law, The Royal Institution of Chartered Surveyors in Scotland, and if this subcontract is governed by Northern Irish law, the Royal Society of Ulster Architects).

### Communications

- Communications (select **one**):
  - may** be made electronically ☒
  - may not** be made electronically ☐
  - If communications **may** be made electronically, specify which communications and the format (or refer to other document setting out such information):  
[ ]

### Amey Policies

- The Amey policies to be complied with when carrying out the Subcontract services which are provided on the *Contractor's* website at: [www.amey.co.uk/about-us/governance/the-amey-code-and-policies/](http://www.amey.co.uk/about-us/governance/the-amey-code-and-policies/) as amended from time to time, together with any supplemental policies listed in Part 3, numbered document 4 "Additional Site Policies and Requirements".

### Required Net Asset Threshold

The *required net asset threshold* is:

- For the Subcontractor: £[ ]
- For the Subcontractor's ultimate holding company (if applicable): £[ ]

### X1: Price Adjustment for inflation (used only with Options A and C)

#### If Option X1 is used

- The proportions used to calculate the Price Adjustment Factor are

0.  linked to the index for

0.	15		Plant
0.	15		Aggregates
0.	45		Coated Macadam Products
0.	03		DERV fuel
0.	02		Gas oil fuel
0.	00	non-adjustable	
1.00			

- The *base date* for indices is January 2023
- The *inflation adjustment date* are 1st April 2024 and on each anniversary of that date thereafter
- The indices are those prepared by Items (10-199; 263-268; 299-326; 340-342; 388-414; 436-444; 449-475; 503-523; 525-553; 610-634; 654-656) of Series 700 and items (551-598; 777-779; 813-827; 910-913; 920-922) of Series 1100 are adjusted by the Price Adjustment Formulae Indices (Civil Engineering) 1990 series. RPIX (RPI All Items Excl Mortgage Interest) shall apply to all other items

### X3: Multiple currencies (only used with Option A)

#### If Option X3 is used

- The *Contractor* will pay for the items or activities listed below in the currencies stated:

items and activities	other currency	total maximum payment in the currency
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

- The *exchange rates* are those published in [ ] on [ ] (date).

### X10: Information modelling<sup>6</sup>

#### If Option X10 is used

<sup>6</sup> [Note: the generic NEC4 provisions of X10 are un-amended in this precedent. Amey should consider whether these requirements are appropriate for the project/sub-contract. In particular, (i) Amey's responsibility for faults and errors in the Information/information provided by Information Provider under X10.7, (ii) the duties imposed on the sub-contractor; and (iii) the Sub-Contractor's entitlement to a compensation event via X10.5 must be considered. Please speak to your legal contact if further advice is required.]

- The period after the Subcontract Date within which the *Subcontractor* is to submit a first Information Execution Plan for acceptance is [ ]
- The minimum amount of insurance cover for claims made against the *Subcontractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim [ ]
- The period following the end of the Subcontract Service Period or earlier termination for which the *Subcontractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is [ ]

#### **X12: Multiparty collaboration (not used with Option X20)**

##### **If Option X12 is used**

- The *Promoter* is [ ]
- The Schedule of Partners is in [ ]
- The *Promoter's objective* is [ ]
- The Partnering Information is in [ ]

#### **X13: Performance bond**

##### **If Option X13 is used**

- The amount of the performance bond/bank guarantee is a sum equal to [ ]% of the Total of the Prices<sup>7</sup>

#### **X17: Low service damages**

##### **If Option X17 is used**

- The *subcontract service level table* is

<i>amount of low service damages</i>	<i>service level</i>
[ ]	for [ ]
[ ]	for [ ]
[ ]	for [ ]
[ ]	for [ ]

#### **X19: Termination by either Party (not used with Option X11)**

##### **If Option X19 is used**

- The *minimum period of subcontract service* is [ ] years after the *subcontract starting date*.
- The notice period is [ ]

<sup>7</sup> Ensure that this figure is reflected in the executed performance bond.

## **X20: Key performance Indicators (not used with Option X12)**

### **If Option X20 is used**

- The *incentive schedule* for Key Performance Indicators is in [ ] the Subcontract Scope ]
- A report of performance against each Key Performance Indicator is provided at intervals of [ ] 1 ] months

## **X23: Extending the Subcontract Service Period**

### **If Option X23 is used**

- The *maximum subcontract service period* is [ ] years after the *subcontract starting date*.
- The *periods for extension* are:

<i>Order</i>	<i>Period for extension (months)</i>	<i>Notice date</i>
First	[ ]	[ ]
Second	[ ]	[ ]
Third	[ ]	[ ]
Fourth	[ ]	[ ]

- If there are *criteria for extension*, the *criteria for extension* are [ ]

## **X24: The *accounting periods***

### **If Option X24 is used and Option C is not used**

- The *accounting periods* are monthly

### **If Option X24 is used with Option C**

- The *accounting periods* are the dates stated in the Subcontract Data of assessment of the *Subcontractor's share*.

## **Y(UK)3: The Contracts (Rights of Third Parties) Act 1999 or, if this subcontract is governed by Scottish law, the Contract (Third Party Rights) (Scotland) Act 2017)**

### **If Option Y(UK)3 is used:**

<i>term</i>	<i>Beneficiary</i>
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]

**Option Z**

- The conditions of subcontract are amended and supplemented as set out in Schedule 2 to the Subcontract Agreement.

## Part Two – Data provided by the *Subcontractor*

### Statements given in all subcontracts

#### 1. General

- The *Subcontractor* is identified in the Subcontract Agreement
- The *fee percentage* is [ ]%
- The *subcontract service areas* are [ ]
- The *key persons* are

Name	Job title	Responsibilities	Relevant Qualifications	Experience
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]

- The following matters will be included in the Early Warning Register:<sup>8</sup>
  - [ ]
  - [ ]
  - [ ]

#### 2. The *Subcontractor's* main responsibilities

##### If the *Subcontractor* is to provide Subcontract Scope for its plan

- The Subcontract Scope provided by the *Subcontractor* for its plan is in Numbered Document 1 (Subcontract Scope).

#### 3. Time

##### If a plan is to be identified in the Subcontract Data

- A plan (select **one**):
  - is** identified in the Subcontract Data [ ]
  - is not** identified in the Subcontract Data [ ]
  - If a plan **is** identified in the Subcontract Data, the programme reference identified in the Subcontract Data is [ ]

<sup>8</sup> [Note: Ensure that this list is consistent with the Early Warning Register included in the Numbered Documents.]



## 5. Payment

### If Option A, C or E is used

- The *price list* is Numbered Document 2 (*Price List*).

### If Option A or C is used

- The tendered total of the Prices is as set out in operative provision number 2 of the Subcontract Agreement.

## Resolving and avoiding disputes

- The *Senior Representatives* of the *Subcontractor* are
  - Name (1): [ ]
  - Address for communications: [ ]
  - Address for electronic communications: [ ]
  - Name (2): [ ]
  - Address for communications: [ ]
  - Address for electronic communications: [ ]

## X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified the Subcontract Data

The *information execution plan* identified in the Subcontract Data is [ ]

### Data for the Schedule of Cost Components (used only with Option C or E)

- The listed items of Equipment purchased for work on this subcontract, with an on cost charge, are [ ]
- The rates for special Equipment are [ ]
- The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Subcontractor* are [ ]
- The rates for people providing *shared subcontract services* outside the Service Areas are [ ]

### Data for the Short Schedule of Cost Components (used only with Option A)

- The *people rates* are [ ]
- The published list of Equipment is the edition current at the Subcontract Date of the list published by [ ]
- The percentage for adjustment for Equipment in the published list is [ ]%
- The rates for other Equipment are [ ]

- The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Subcontractor* are [REDACTED]
- The rates for people providing *shared subcontract services* outside the Service Areas are [REDACTED]
- Rates for specific employees are as follows:

Employee	Rate
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

### Part Three - numbered documents

The "*numbered documents*", for the purposes of the Subcontract, are those listed below:-

1. Subcontract Scope
2. Price List
3. Early Warning Register
4. Additional Site Policies and Requirements
5. Required form of Ultimate Holding Company Guarantee
6. Required form of Performance Bond
7. Main Contract data and amendments to Main Contract conditions (if any)
8. [Form(s) of Undertakings<sup>9</sup>]
9. [CIC Building Information Modelling Protocol<sup>10</sup>]

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<sup>9</sup> [Note: To be confirmed for each contract.]

<sup>10</sup> [Note: To be confirmed for each contract.]

## SCHEDULE 2 – SCHEDULE OF AMENDMENTS

### Additional conditions of subcontract

- Z1 Rename this clause "Amended and supplemental conditions of subcontract". Delete clause Z1.1 and replace with "The conditions of subcontract shall be amended and supplemented as set out in Schedule 2 to the Subcontract Agreement."

### Amendments to the NEC4 Term Service Subcontract conditions

- Z2 The conditions of subcontract are amended as set out below.

### Identified and defined terms

- 11.2(4) Delete this definition of "Corrupt Act" in its entirety and insert "Not Used".
- 11.2(5) In the first bullet point of the definition of "Defect", after the words "Subcontract Scope", insert "or any other part of this subcontract".
- 11.2(13) In line 2 of the definition of "To Provide the Subcontract Service", after the word "subcontract" insert "and applicable law"
- 11.2(19) In the first line of the definition of "Task Completion", after "Task" insert "in accordance with the Subcontract Scope and all other requirements of this subcontract,"
- 11.2 Add the following new clauses:
- "11.2(22) Anti-Slavery Policy has the meaning given in clause 19G.1.
- 11.2(23) Amey Policies means the *Contractor's* (or any member of the *Contractor's* group's) policies, procedures and standards in place at the commencement of this subcontract and at each of the relevant Sites in relation to regulatory compliance, security, health and safety and including such policies, procedures and standards which have been provided to the *Subcontractor* and as revised and issued by the *Contractor* from time to time including but not limited to the policies provided on the Contractor's website at: [www.amey.co.uk/about-us/governance/the-amey-code-and-policies/](http://www.amey.co.uk/about-us/governance/the-amey-code-and-policies/) and any other policies identified in the Subcontract Data Part One - Data Provided by the Contractor.
- 11.2(24) Amey Trade Marks means any Amey registered or unregistered trademarks, logos, business names or corporate branding in relation to the *subcontract service*.
- 11.2(25) An Application for Payment is an application made pursuant to and in accordance with clause 50.1.
- 11.2(26) Assessment Date has the meaning given to that term in clause 50.1.
- 11.2(27) Beckmann Rights means any liability based directly or indirectly on the decision of the European Court of Justice in the cases of *Beckmann v Dynamco Whicheloe MacFarlane Limited* [2002] or *Martin & Others v South Bank University* [2003] in respect of any right under or in connection with an occupational pension scheme which relates to any matter, right or claim otherwise than in relation to old age, invalidity or survivor's benefits under such a scheme.

- 11.2(28) A Beneficiary is a person in favour of whom the *Contractor* is required, by the terms of the Main Contract, to procure a collateral warranty or third party rights from the *Subcontractor* or any subsubcontractors in the relevant form included in the Main Contract and/or the Subcontract Documents.
- 11.2(29) A Business Day is any day which is not a Saturday, a Sunday or a public holiday (the latter being Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday).
- 11.2(30) The CDM Regulations are the Construction (Design and Management) Regulations 2015 or, if the subcontract is governed by Northern Irish law, the Construction (Design and Management) Regulations (Northern Ireland) 2016.
- 11.2(31) The Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005.
- 11.2(32) The Construction Phase Plan means those parts of the construction phase plan (as defined in the CDM Regulations), together with any updated and revisions of it by the Principal Contractor notified to the *Subcontractor* before or during the progress of the *subcontract service*.
- 11.2(33) The *Contractor's* Persons are the *Contractor's* employees, its subcontractors and employees of such subcontractors (excluding the *Subcontractor* and the *Subcontractor's* Persons) engaged in the carrying out of the service in the Main Contract.
- 11.2(34) Convictions are, other than in relation to minor road offences, any previous or pending prosecutions, convictions, cautions or binding overs (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 Scottish SI 2013/50 or any replacement or amendment to those Orders) which are required to be disclosed under the Police Act 1997, and any other applicable laws which require spent convictions to be disclosed.
- 11.2(35) DBS Checks are Disclosure and Barring Service checks in compliance with applicable laws and/or government guidelines and/or as directed by the *Contractor* including, if this subcontract is governed by Scottish law, the obtaining of a disclosure from Disclosure Scotland.
- 11.2(36) The Data Protection Legislation is the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
- 11.2(37) The Due Date is defined in clause 51.6.
- 11.2(38) The Final Certificate is the Certificate referred to at clause 59.2.
- 11.2(39) The Final Date for Payment is defined in clause 51.7 or, in relation to the Final Certificate, clause 59.2.

- 11.2(40) Financial Statements are the annual audited consolidated financial statements of a party prepared in accordance with the generally accepted accounting standards applicable in the country in which such party is incorporated and/or the IFRS.
- 11.2(41) Group means, in relation to a Party, that Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party.
- 11.2(42) IFRS is the International Financial Reporting Standards as issued by the International Accounting Standards Board from time to time.
- 11.2(43) IR35 Contractor is any Sub-Contractor's Person or any other individual engaged either directly by the Sub-Contractor (or via any other intermediary or intermediaries) through a PSC.
- 11.2(44) ITEPA is the Income Tax (Earnings and Pensions) Act 2003.
- 11.2(45) Liabilities means all liabilities including, but not limited to, claims for redundancy payments, Beckmann Rights, pay including holiday pay, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for discrimination or claims for equal pay, and any other claims whether in tort or delict (including negligence), contract or statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis.
- 11.2(46) The Main Contract is the agreement between the *Client* and the *Contractor* for the *service* as described in Numbered Document 7 (*Main Contract data and amendments to Main Contract conditions*).
- 11.2(47) Net Assets are the consolidated net tangible assets of a party and its subsidiaries.
- 11.2(48) The Notified Sum is (subject to clauses 50.7 and 51.8) the sum that the Contractor or the *specified person* notifies as being the sum due at the relevant Due Date in accordance with clause 50.6.
- 11.2(49) *numbered documents* means the documents which are annexed to this Subcontract Agreement and/or listed in Part 3 of Schedule 1.
- 11.2(50) A Payment Notice is the payment notice issued by the *Contractor* or the *specified person* pursuant to either clause 50.4 or 50.6.
- 11.2(51) Principal Contractor means the person appointed as such by the *Client* pursuant to the CDM Regulations, and their successors, in each case as may be identified to the *Subcontractor* by the *Client* from time to time.
- 11.2(52) Principal Designer means the person appointed as such by the *Client* pursuant to the CDM Regulations, and their successors, in each case as may be identified to the *Subcontractor* by the *Client* from time to time.
- 11.2(53) The Prohibited Materials are any Plant and Materials which by their nature or application do not conform with British Standards or Codes of Practice or any European Union equivalent current at the date of use and any materials known within the Subcontractor's trade to be deleterious in the particular circumstances in which they are used, or

specified for use, to health and safety and for the durability of the *subcontract service*.

11.2(54) PSC is a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of ITEPA.

11.2(55) PVG Checks are the carrying out of any checks of Subcontractor's Persons regarding information held on such persons pursuant to the Protection of Vulnerable Groups (Scotland) Act 2007, as may be required for compliance with the Statutory Requirements and/or government guidelines and/or as may be directed by the *Contractor*.

11.2(56) Self-Proving Form means in accordance with the requirements of Sections 3 and 7 of the Requirements of Writing (Scotland) Act 1995 or in such other manner as is acceptable to the Parties.

11.2(57) A Replacement Contractor is any third party that may be appointed by the *Contractor* or third party that may be appointed by the *Client* (which may include the *Contractor*) from time to time to carry out the *Contractor's* obligations under this subcontract.

11.2(58) The *sensitive services* are the works described as such in the Subcontract Data.

11.2(59) A Statutory Requirement is

- any Act of Parliament and, to the extent applicable, any Act of the Scottish Parliament;
- any instrument, rule or order made under any Act of Parliament or, to the extent applicable, any Act of the Scottish Parliament;
- any regulation or bylaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the subcontract service or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to perform work at an Affected Property or the Service Areas (including, without limitation, any planning permission).

11.2(60) The Subcontract Agreement is the agreement entered into between the *Contractor* and the *Subcontractor* under which the *Subcontractor* has agreed to provide the *subcontract service*.

11.2(61) The Subcontract Payment Schedule is the table set out at Schedule 3 to the Subcontract Agreement

11.2(62) Subcontractor's Personnel are persons engaged by the *Subcontractor* or its Subsubcontractors in the performance of the *Subcontractor's* obligations under the subcontract.

11.2(63) The *Subcontractor's* Persons are the *Subcontractor's* employees, its Subsubcontractors and employees of such Subsubcontractors engaged in the carrying out of the *subcontract service*.

11.2(64) Successor Subcontractor means any person or entity (including the *Contractor* or the *Client*) that provides all or part of the *subcontract*

service or works similar or equivalent to all or part of the *subcontract service* in substitution for the *Subcontractor* or any Subsubcontractor.

11.2(65) TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended, extended or re-enacted from time to time).

11.2(66) Financial Year is a year commencing on [ABC]

## Interpretation and the law

12.3 After "change to" add "or waiver of". At the end, delete "by the Parties". Replace with "by the authorised representative of each Party. No waiver by either Party of any default or defaults by the other in the performance of any of the provisions of this subcontract operates or is construed as a waiver of any other or future defaults whether of a like or different character."

12.5 Insert a new clause 12.5 as follows:

"In the subcontract, references to the "reverse charge applying" (or similar) mean any case where the recipient of a supply for VAT purposes, or a member of a VAT group of which the recipient of the supply is a member, is required to account to HM Revenue & Customs for the VAT chargeable in respect of the supply pursuant to section 55A of the Value Added Tax Act 1994 and the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019."

## Communications

13.1 At the beginning of clause 13.1 delete "Each" and insert "Subject to clauses 25.6 and (where applicable) 27M, each".

At the end of clause 13.1 insert:

"Any early warnings, applications, notices and any other communications required to be given by the *Subcontractor* under this subcontract are only validly given if they are delivered to the *Contractor* by pre-paid recorded post and a copy is also sent by email, in each case to the address(es) and email address(es) set out in the Subcontract Data Part 1, or such other address(es) or email address(es) as may be notified by the *Contractor* to the *Subcontractor* in writing from time to time.<sup>11</sup>

An early warning, application, notice or other communications given by the *Subcontractor* that does not comply with any requirements in this subcontract for its form, content or delivery, is disregarded and is not an effective early warning, application, notice or communication for the purposes of this subcontract."

13.2 In the first line of the second paragraph of clause 13.2 and after the "communication system," insert "subject to clauses 25.6 and (where applicable) 27N,"

13.9 Insert a new clause 13.9 as follows:

"Without prejudice to any and all other obligations which the *Subcontractor* has under this subcontract, the *Subcontractor* provides the *Contractor* with all necessary early warnings, applications, notices and any other communications in sufficient time and detail to enable the *Contractor* to comply with any obligations

<sup>11</sup> [Note: The requirement for the *Subcontractor* to issue notices by post and by email is to reduce the risk of notices being missed by Amey (e.g. because the individual to whom an email is addressed is out of the office). For this reason, Amey will generally resist any attempts to loosen the notice requirements, e.g. to allow notification by email only. If this was being considered, additional protections such as a requirement to cc multiple people, should be considered.]



it may have under the Main Contract in relation to the provision of such early warnings, applications, notices and any other communications. In the event that the *Subcontractor* is in breach of this obligation, it is not entitled to (and hereby waives) any or all remedies or reliefs under or arising out of or in connection with this subcontract and shall indemnify the *Contractor* in relation to any losses suffered by the *Contractor* resulting from such breach."

### **The Contractor**

14.5 Insert the following as a new clause 14.5:

"The *Subcontractor* gives the *Contractor* an early warning of any requirement for an alteration to, or an alternative or modified method of, carrying out the *subcontract service*, or any limitation required to be placed on the carrying out of the *subcontract service* arising from:

- (1) the unavailability of Plant, machinery and/or Materials;
- (2) the unavailability of the *Contractor's* Persons or *Subcontractor's* Persons (as the case may be) necessary for the operation of Plant and/or machinery; and
- (3) the failure of any Plant and/or machinery,

for the carrying out of the *subcontract service*. No such instruction from the *Contractor* arising therefrom gives the *Subcontractor* an entitlement to any additional payment (and there shall be no addition to the Prices) or to any changes to the timing of the *subcontract service* or Task Completion Dates to later dates."

### **Early Warning**

15.1 In the first paragraph of clause 15.1, after the words "aware of any matter", insert "indicated in clause 14.5 (of which the *Subcontractor* notifies the *Contractor*), clause 82 or"

15.4 Insert the following at the end of clause 15.4:

"Without limiting the obligations and liabilities of the Parties under the subcontract, the Early Warning Register does not itself allocate contractual risks or liabilities to either Party and is treated as a management tool only."

### **Requirements for instructions**

Delete the heading "Requirements for instructions" and insert "Ambiguities and inconsistencies"

17.1 Delete clause 17.1 and insert a new clause 17.1 as follows:<sup>12</sup>

"17.1(1) The *Subcontractor* has reviewed the Subcontract Documents and satisfies itself that there are no conflicts or divergences between and/or discrepancies and/or ambiguities within any of the Subcontract Documents the resolution of which might have a bearing on the Prices and/or plan for carrying out the *subcontract service*."

<sup>12</sup> [Note: While this is a fairly robust provision, compilers should ensure that any more onerous requirements in the Main Contract dealing with conflicts, divergences etc. are stepped down fully. As with any other provision of this Subcontract, it may be the case that where Amey is subject to a less onerous obligation upstream that amendments could be entertained to this clause. However this reflects what we would normally expect Employers to insist upon in Main Contracts.]

17.1(2) If the *Contractor* or the *Subcontractor* finds any such conflict, divergence, discrepancy or ambiguity, he immediately gives notice to the other.

17.1(3) In the event of any such inconsistency or ambiguity referred to in this clause 17.1 being discovered the *Contractor* shall be entitled, in its absolute discretion, to determine and direct the *Subcontractor* as to which of the provisions or documents (or parts of documents) are to prevail. The *Subcontractor* shall comply with whatever documents (or parts of documents) he is directed are to prevail and shall be excused compliance with the documents (or parts of documents) which he is directed are to be disregarded. The *Subcontractor* shall not be entitled to any additional payment (and there shall be no addition to the Prices) or to any changes to timing of the *subcontract service* or Task Completion Dates as a consequence of having to comply with the prevailing documents (or parts of documents).

17.2 At the end of the first sentence, insert "or if to carry out the *subcontract service* in accordance with this subcontract will result in the service under the Main Contract not being in accordance with the Statutory Requirements".

## 18. Corrupt Acts

Delete clause 18 in its entirety and replace it with the following new clause entitled "Corrupt practices":

### "18. Corrupt Practices

18.1 The *Subcontractor* represents, warrants and undertakes to the *Contractor* that:

- .1 in carrying out its responsibilities under this subcontract, neither it nor any of its officers, employees, directors or agents directly or indirectly offers, promises, pays or gives, or authorises any offer, promise, payment or gift of money or anything else of value to any person, either as an improper inducement to make, or as an improper reward for making, any decision favourable to the interests of the *Contractor* or the *Subcontractor*;
- .2 neither it nor any of its officers, employees, directors or agents has any connection with the *Client* or the *Contractor* nor any of the *Client's* or the *Contractor's* officers, employees, directors or agents that has not been disclosed to the *Contractor*;
- .3 neither it nor any of its officers, employees, directors or agents has committed or will commit any offence under any legislation creating offences in respect of fraudulent acts or any offence at common law in respect of fraudulent acts,
- .4 the information in relation to the matters referred to in clauses 18.1.1, 18.1.2 and 18.1.3 provided to the *Contractor* following any request from the *Contractor* is complete, accurate and not misleading; and
- .5 in carrying out its responsibilities under this subcontract, the *Subcontractor* and its officers, employees, directors or agents shall comply with the *Contractor's* policies and codes of conduct relating to anti-bribery and corruption ("the Amey

Code") copies of which have either been provided to the *Subcontractor* or the *Subcontractor* has been provided with the relevant information to be able to access the Amey Code on the Amey website at [www.amey.co.uk/about-us/governance/the-amey-code-and-policies/](http://www.amey.co.uk/about-us/governance/the-amey-code-and-policies/).

- 18.2 The *Subcontractor* represents, warrants and undertakes to the *Contractor* that it and its officers, employees, directors and agents shall comply in all respects with the Employer Relations Act 1999 (Blacklists) Regulations 2010. If the *Contractor* becomes aware of what it determines in good faith to be a breach of the above representation and warranty the *Contractor* is entitled to terminate the employment of the *Subcontractor* under this subcontract, and any other agreement between the parties, with immediate effect.

### Task Orders

- 19.7 In the second paragraph, delete from (and including) "with interest" until the end of clause 19.7.

### Entire Agreement

- 19A Insert a new clause 19A entitled "Entire Agreement" as follows:
- "19A.1 This *subcontract* contains the entire agreement between the Parties concerning its subject matter. Any previous understanding, agreement (including, but not limited to, any letter of intent between the Parties), representation or warranty relating to that subject matter is superseded and replaced by this subcontract and has no further effect.
- 19A.2 The Parties acknowledge and agree that the terms and conditions of this subcontract shall be deemed to apply to all work undertaken by the *Subcontractor* for the *Contractor* in connection with the *subcontract service* (whether under a letter of intent or otherwise) and applies whether or not the work was undertaken prior to the date of this subcontract. The *Subcontractor* acknowledges that any payment made by the *Contractor* to the *Subcontractor* prior to the date of this subcontract (whether under a letter of intent or otherwise) relating to the *subcontract service* forms part of the Prices, and such amounts shall be deducted from the amount of the first interim payment to the *Subcontractor* under this subcontract.

### Subcontract to be read as a whole

- 19B Insert a new clause 19B entitled "Subcontract to be read as a whole" as follows:
- 19B.1 The Subcontract Agreement prevails over any other provisions of the subcontract;
- 19B.2 Notwithstanding any other provision of this subcontract, in respect of any issue arising out of or in connection with the *subcontract service*, the *Subcontractor* has no greater right to changes to the timing of the *subcontract service* or Task Completion Dates, or other right or relief (excluding the right to payment) than does the *Contractor* under the Main Contract in so far as it relates to the same facts, save where the issue relates to some breach by the *Contractor* of this subcontract or an instruction given in writing by the *Contractor* but which does not give effect to an equivalent instruction under the Main Contract.

- 19B.3 If the *numbered documents* include any standard terms and conditions of the *Subcontractor*, such standard terms and conditions are of no contractual effect whatsoever."

### **Waiver and obligations**

19C Insert a new clause 19C entitled "Waiver and obligations" as follows:

- "19.C.1 No failure or delay by the *Contractor* to exercise any right or remedy provided under this subcontract or by law constitutes a waiver of that or any other right or remedy, nor does 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 precludes or restricts the further exercise of that or any other right or remedy. No waiver of any of the provisions of this subcontract is effective unless it is expressly stated to be a waiver and communicated to the *Subcontractor* in writing in accordance with the provisions of clause 13.
- 19C.2 No payment enquiry, inspection, acceptance, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the *Contractor* operates to exclude or limit the *Subcontractor's* obligations under this subcontract or constitute evidence that any matter to which the same relates is in accordance with this subcontract."

### **Severability**

19D Insert a new clause 19D entitled "Severability" as follows:

- "19D.1 If any court or competent authority finds that any provision of this subcontract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision is, to the extent required, deemed to be deleted, and the validity and enforceability of the other provisions of this subcontract are not affected."
- 19D.2 If any invalid, unenforceable or illegal provision of this subcontract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable."

### **Confidentiality**

19E Insert a new clause 19E entitled "Confidentiality" as follows:

- "19E.1 the *Subcontractor* does not during the period of its employment under this subcontract or at any time after the expiry or termination of this subcontract or of the *Subcontractor's* employment hereunder disclose to any person (other than essential employees in the proper course of their duties, the *Subcontractor's* suppliers and subsubcontractors and legal or other advisors, law enforcement or other regulatory bodies) any information not already in the public domain relating to this subcontract, the *subcontract service*, the service in the Main Contract and the business of the *Contractor* and the *Client*. The *Subcontractor* shall ensure that any persons having access to

such information are aware of these obligations and are similarly bound; and

- 19E.2 the Subcontractor does not without the prior written acceptance of the Contractor take or permit to be taken any photographs of the *subcontract service* or the service in the Main Contract or any Affected Property for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations in any publication journal or newspaper or any radio or television programme or internet site in relation to the *subcontract service* or the service in the Main Contract or any part thereof."

## Convictions

19F Insert a new clause 19F entitled "Convictions" as follows:

- "19F.1 The *Subcontractor* carries out and is responsible for DBS Checks and, where appropriate, PVG Checks, on all *Subcontractor's* Persons being engaged to carry out the *sensitive services* (if any). The *Subcontractor*, immediately upon request, provides the *Contractor* with reasonable proof that such DBS Checks and, where appropriate, PVG Checks, have been carried out and provides a copy of the results to the *Contractor* to the extent permitted by law and/or government guidelines.
- 19F.2 The *Subcontractor* ensures that any *Subcontractor's* Person who discloses any Conviction or Anti-Social Behaviour Order, or who is found to have any Conviction following the results of a DBS Check or PVG Check, where such check is required pursuant to clause 19F.1, is not employed or engaged in carrying out any part of any *sensitive services* (if any) without the *Contractor's* prior written consent. The *Subcontractor* bears all costs associated with compliance with this clause 19F.2.
- 19F.3 The *Subcontractor* procures that the *Contractor* is kept advised at all times of any *Subcontractor's* Person who, subsequent to his/her commencement of employment as a member of staff or engagement on or in connection with the *sensitive services* (if any), receives a Conviction or whose previous Conviction(s) become known to the *Subcontractor* (or any employee of the *Subcontractor* involved in the provision of the *sensitive services* (if any))."

## Modern Slavery

19G Insert a new clause 19G entitled "Modern Slavery"

- 19G.1 In performing its obligations under the subcontract, the *Subcontractor* ensures that each of its *Subsubcontractors* complies with:
- .1 all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - .2 the *Contractor's* anti-slavery and human trafficking statement or equivalent is available on the *Contractors* website [www.amey.co.uk/about-us/governance/the-amey-code-and-policies/](http://www.amey.co.uk/about-us/governance/the-amey-code-and-policies/) as amended from time to time (the "**Anti-Slavery Policy**").

- 19G.2 The *Subcontractor* undertakes warrants and represents that neither it nor any of its officers, or employees has:
- .1 been convicted of any offence involving slavery and human trafficking; nor
  - .2 been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 19G.3 The *Subcontractor* shall implement due diligence procedures for its own Subsubcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 19G.4 The *Subcontractor* shall notify the *Contractor* as soon as it becomes aware of:
- .1 any breach, or potential breach, of the Anti-Slavery Policy; or
  - .2 any actual or suspected slavery or human trafficking within its supply chains; or
  - .3 being the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking
- 19G.5 The *Subcontractor* shall:
- .1 maintain a complete set of records to trace the supply chain of all Equipment, Plant, Materials and services provided to the *Contractor* in connection with this subcontract; and
  - .2 implement annual Subsubcontractor audits, either directly or through a third party auditor to monitor compliance with the Anti-slavery Policy, the first of which shall be completed within 6 months of the date of this subcontract.
- 19G.6 The *Subcontractor* shall implement a system of training for its employees to ensure compliance with the Anti-Slavery Policy.
- 19G.7 The *Subcontractor* shall keep a record of all training offered and completed by its employees to ensure compliance with the Anti-Slavery Policy and shall make a copy of the record available to the *Contractor* on request.
- 19G.8 The *Subcontractor* shall indemnify the *Contractor* against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the *Contractor* as a result of any breach of Anti-Slavery Policy by the *Subcontractor* or its supply chains.
- 19G.9 The *Contractor* may terminate this subcontract with immediate effect by giving written notice to the *Subcontractor* if the *Subcontractor* commits a breach of the Anti-slavery Policy or fails to notify in accordance with clause 19G.4

#### **Prevention of the Facilitation of Tax Evasion**

Insert a new clause 19H entitled "Prevention of Facilitation of Tax Evasion" as follows:

- 19H.1 The *Sub-Contractor* hereby warrants and confirms to the *Contractor* that:
- 19H.1.1 it and its employees and other associated persons have not and will not engage in any activity, practice, conduct or thing which would (or the omission of which would) constitute:
- (a) a UK tax evasion offence within the meaning of section 45(4) of the Criminal Finances Act ("**CFA**") 2017 ("**UK Tax Evasion Offence**");
  - (b) a foreign tax evasion offence within the meaning of section 46(5) of the CFA 2017 ("**Foreign Tax Evasion Offence**"); and/or
  - (c) the facilitation of a UK Tax Evasion Offence or Foreign Tax Evasion Offence within the meaning of sections 45(5) or 46(6) of the CFA 2017 (a "**Facilitation Offence**"); and
- 19H.1.2 it and (where applicable) its associated persons have carried out and will carry out periodic assessments of the risk of one or more of it and its employees and other associated persons committing a Facilitation Offence and that it and (where applicable) its other associated persons will maintain effective anti-facilitation of tax evasion procedures, including prevention procedures within the meaning of sections 45(3) and 46(4) of the CFA 2017, which conform with all applicable laws, regulations and statutory guidance issued or approved under or related to the CFA 2017.
- 19H.2 The *Sub-Contractor*:
- 19H.2.1 complies with any of the *Contractor's* tax compliance policies (as may be notified in writing to the *Sub-Contractor* and all applicable laws, statutes, regulations, guidance, relevant industry code, or accepted practice relating to tax or preventing a UK Tax Evasion Offence, Foreign Tax Evasion Offence or Facilitation Offence as is updated from time to time;
- 19H.2.2 immediately notifies the *Contractor* in writing on becoming aware of, or suspecting, any failure to comply with any provision of this clause 19H;
- 19H.2.3 upon the written request of the *Contractor* certifies to the *Contractor* in writing signed by an officer of the *Sub-Contractor*, compliance with this clause 19H, in such form as the *Contractor* requires; and
- 19H.2.4 promptly provides such supporting evidence of compliance with this clause 19H as the *Contractor* requests at any time.
- 19H.3 The *Sub-Contractor* ensures that any of its associated persons who are performing services for or on behalf of the *Sub-Contractor* in connection with this Agreement do so only on the basis of written terms (including warranties) equivalent to those applying to or given by the *Sub-Contractor* in this clause 19H. The *Sub-Contractor* is directly liable to the *Contractor* for any breach by such persons of those terms (including warranties).

- 19H.4 For the purpose of this clause 19H, the meaning of prevention procedures and whether a person is associated with another person is determined in accordance with sections 44(4), 44(5), 45(3) and 46(4), as applicable of the CFA 2017 (and any guidance issued under section 47 of that Act).
- 19H.5 The *Sub-Contractor* hereby agrees to fully indemnify the *Contractor* in respect of any losses, damages, fines, penalties, charges or other costs which the *Contractor* or any associated person(s) or other entity within the *Contractor's group* companies suffers in the event that the *Sub-Contractor* is in breach of this clause 19H.
- 19H.6 Breach of this clause 19H is deemed to be a material breach of this Agreement.

#### **Providing the *subcontract service***

- 20.1 Add the following at the end of clause 20.1:
- "and in accordance with:
- 20.1.1 the reasonable instructions of the *Contractor*,
  - 20.1.2 reasonably in accordance with the service under the Main Contract and in a proper and workmanlike manner,
  - 20.1.3 the Subcontract Documents,
  - 20.1.4 good industry practice,
  - 20.1.5 all applicable laws, including all Statutory Requirements, and with
  - 20.1.6 new Materials (except as otherwise stated in the Subcontract Scope) which are reasonably suitable for their purposes and new Plant which is reasonably suitable for its purposes and which new Materials and/or new Plant complies with the Subcontract Documents.
- 20.2 The Subcontractor does not specify any Prohibited Materials and shall not use, or allow any sub-subcontractors to use, any Prohibited Materials.
- 20.3 The Subcontractor does not substitute any Plant and Materials specified in the Subcontract Scope without the prior written consent of the *Contractor*, such consent not to be unreasonably withheld or delayed and not to be held to relieve the *Subcontractor* of its obligations under this subcontract."

#### **The *Subcontractor's design***

- 21 Rename clause 21 "**The *Subcontractor's design***"
- 21.1 Delete "or" at the end of the second bullet point. Delete the full stop at the end of the third bullet point and replace with "or". Insert a new fourth bullet point as follows:
- " • this subcontract"
- 21.2 Add a new clause 21.2 as follows:



"The Subcontractor designs the parts of the *subcontract service* which the Subcontract Scope or the relevant Task Order state the *Subcontractor* is to design."

21.3 Add a new clause 21.3 as follows:

"Insofar as the *Subcontractor* is responsible for design the *Subcontractor* shall have in respect of any defect or insufficiency in design the like liability to the *Contractor*, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the *Client*, had supplied such design for or in connection with works to be carried out and completed by a building contractor not being the supplier of the design."<sup>13</sup>

21.4 Add a new clause 21.4 as follows:

"The *Contractor* has an irrevocable, royalty-free, non-exclusive licence, with the full right to sub-licence to the *Client*, to copy and use the *Subcontractor's* design (which includes the *Subcontractor's* drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the *Subcontractor* in relation to the *subcontract service*) and to reproduce the designs and content of them for any purpose relating to the *service* in the Main Contract including, without limitation, the performance, operation, maintenance, advertisement, reinstatement, refurbishment and repair of the *service* in the Main Contract and the relevant Affected Properties. The *Contractor's* licence to use the *Subcontractor's* design carries the right to grant sub-licences and is transferrable to third parties without the *Subcontractor's* consent."<sup>14</sup>

[21.4 Add a new clause 21.4 as follows:<sup>15</sup>

21.4.1 In this Clause 21.4:

"**Existing IP**" is all *Subcontractor's* design (which includes the *Subcontractor's* drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the *Subcontractor* in relation to the *subcontract service*) which the *Subcontractor* can establish to the satisfaction of the *Contractor*, acting reasonably:

(a) existed in substantially the same form and with substantially the same contents prior to the engagement of the *Subcontractor* by the *Contractor*;

(b) are the *Subcontractor's* property; and

(c) are of general application and do not relate specifically to the *subcontract service*, the Site, or the operation of business interests of the *Contractor*.

"**Intellectual Property Rights**" are any and all current and future intellectual or industrial rights (whether legal or equitable), including,

<sup>13</sup> Please ensure that where the Main Contract requires a greater duty of care, the subcontract should be amended accordingly. Please note that deleting this provision could give rise to an argument that the *Subcontractor* has a "fitness for purpose" design obligation (which may be appropriate where Amey is subject to such requirement under the Main Contract).

<sup>14</sup> [Note: We have set out a copyright licence that is in line with usual market practices but care will need to be taken to ensure that where the Main Contract requires any rights over and above these, this clause is amended accordingly.]

<sup>15</sup> Optional clause: If Amey requires ownership of any New IP (e.g. design carried out by the Subcontractor specifically for this project), rather than a licence, this clause should be selected and the default wording of Clause 22.1 above should be deleted. Otherwise, please delete the wording highlighted yellow.

patents, copyrights (including related moral rights), design rights, trade marks, service marks internet domain names, trade-secrets, topography rights, know-how, methodologies, processes, rights in databases, whether registered or unregistered, together with applications for or any right to apply for or register any of the foregoing and any other intellectual property rights of a similar nature or having equivalent effect anywhere in the world.

"**New IP**" is all *Subcontractor's* design (which includes the *Subcontractor's* drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the *Subcontractor* in relation to the *subcontract service*), other than the Existing IP.

22.1.2 All Intellectual Property Rights in the New IP shall be vested solely in the *Contractor* and the *Subcontractor* hereby assigns to the *Contractor* with full title guarantee all existing and future Intellectual Property Rights in the New IP. To the extent that the *Subcontractor* is unable to assign all Intellectual Property Rights in the New IP to the *Contractor*, the *Subcontractor* shall hold such Intellectual Property Rights in trust for the *Contractor* to be dealt with at the *Contractor's* direction.

22.1.3 The Intellectual Property Rights in all Existing IP shall remain vested in the *Subcontractor*, but the *Contractor* has an irrevocable, royalty-free, non-exclusive licence, with the full right to sub-licence to the *Client*, to copy and use the Existing IP and to reproduce the designs and content of it for any purpose relating to the *service* in the Main Contract including, without limitation, the performance, operation, maintenance, advertisement, reinstatement, refurbishment and repair of the *service* in the Main Contract and the relevant Affected Properties. The *Contractor's* licence to use the Existing IP carries the right to grant sub-licences and is transferrable to third parties without the *Subcontractor's* consent."]

21.5 Insert a new clause 21.5 as follows:

"The *Subcontractor* does not use any Amey Trade Marks in relation to the *subcontract service* without the *Contractor's* prior written approval and, where such approval is given, the *Subcontractor* complies with the *Contractor's* written instructions regarding the use of the Amey Trade Marks."

### **Working with the *Contractor* and Others**

23.2 At the end of the clause insert "or deducted from amounts due to be paid to the *Subcontractor* by the *Contractor*".

### **Subsubcontracting**

24.2 Delete clause 24.2 and replace with:

"The *Subcontractor* submits the name of each proposed subsubcontractor whose scope relates to all or a material part of the *subcontract service* or is critical to the delivery of the *subcontract service*, to the *Contractor* for acceptance. The *Contractor* may in its absolute discretion accept or reject the proposed subsubcontractor. The *Subcontractor* does not appoint such proposed subsubcontractor until:

24.2.1 the *Subcontractor* has provided such information as may be required by the *Contractor* at any stage of the acceptance process;

24.2.2 the *Contractor* has accepted such subsubcontractor; and

24.2.3 the *Contractor* has accepted the subsubcontract documents.

24.4 Insert a new clause 24.4 as follows:

"The *Subcontractor* does not assign to a factor or similar person any monetary benefit accruing under this subcontract and unless directed otherwise by a court of law, the *Contractor* only makes payment to the *Subcontractor* either in the name and to the address indicated in Part Two of the Subcontract Data or by BACS transfer into an account held in the name of the *Subcontractor*."

24.5 Insert a new clause 24.5 as follows:

"The *Subcontractor's* responsibility for and obligations to carry out the *subcontract service* (including the design thereof to the extent that the *Subcontractor* is responsible under the subcontract for the same) shall not be diminished or relieved by the subsubcontracting of any part of the supply of goods or materials, design or works to any person named in the Subcontract Documents, nor by the specifying, naming or listing of subsubcontractors, suppliers or manufacturers in the Subcontract Documents."

24.6 Insert a new clause 24.6 as follows:

"The *Contractor* may at any time direct the *Subcontractor* to terminate the whole, or any part of, any subsubcontract in the event that such subsubcontractor has committed any act, omission or default which is in breach of the Amey Policies or which causes the *Subcontractor* to materially breach the terms of this subcontract.

### Other responsibilities

25 Add the following clauses at the end of clause 25:

"25.5 Subject to clause 25.6, if the *Contractor* purports to give any instruction to the *Subcontractor* or his authorised representative otherwise than in writing, it is of no immediate effect and the *Subcontractor* asks the *Contractor* to provide a written confirmation instead. Subject to clause 25.6, any instruction provided by the *Contractor* to the *Subcontractor* pursuant to this clause 25.5 only takes effect as from the date of the *Contractor's* written confirmation of that instruction.

25.6 Notwithstanding the provisions of clause 25.5, the *Contractor* is entitled to demand immediate compliance with a verbal instruction. Where instructions are issued by the *Contractor* under this clause 25.6 the *Contractor* shall provide written confirmation of that instruction as soon as practicable."<sup>16</sup>

### Assignment (or, if the subcontract is governed by Scottish law, assignation)

26 Delete existing clause 26 and replace with the following:

The *Subcontractor* may not assign or charge the benefit of this subcontract or any right arising under it without the prior written consent of the *Contractor*."

### Disclosure

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<sup>16</sup> [Note: This provision should only be used in emergencies (e.g. health and safety risks on site etc). In all other instances it is more appropriate (and creates greater certainty) to issue instructions in accordance with clause 27.5.]

Delete the existing clause 27 and replace it with the following:

- "27.1 The *Subcontractor* does not during the period of its employment under this subcontract or at any time after the expiry or termination of this subcontract or of the *Subcontractor's* employment hereunder disclose to any person (other than essential employees in the proper course of their duties, the *Subcontractor's* suppliers and Subsubcontractors and legal or other advisors, law enforcement or other regulatory bodies) any information not already in the public domain relating to this subcontract, the *subcontract service*, the service in the Main Contract and the business of the *Contractor* and the Client. The *Subcontractor* ensures that any persons having access to such information are aware of these obligations and are similarly bound.
- 27.2 The *Subcontractor* does not without the prior written approval of the *Contractor* take or permit to be taken any photographs of the *subcontract service* or the service in the Main Contract for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations in any publication journal or newspaper or any radio or television programme or internet site in relation to the *subcontract service* or the service in the Main Contract or any part thereof."

#### **Affected Properties<sup>17</sup>**

29A

Insert a new clause 29A entitled "Affected Properties" as follows:

- "29A.1 The *Subcontractor* is deemed to have inspected and examined the Affected Properties and their surroundings and to have satisfied himself before the date of the subcontract as to the nature of the ground, the sub-surface and sub-soil; the form and nature of the Affected Properties; the extent, nature and difficulty of the *subcontract service*, and materials necessary for the completion of the *subcontract service*; the means of communication with and restrictions of access to the Affected Properties at which the *subcontract service* is to be carried out; the accommodation he may require; and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing of affecting the design or execution of the *subcontract service*.
- 29A.2 Notwithstanding any other provision in this subcontract, the *Subcontractor* is not entitled to any changes to the Task Completion Dates or to any additional payment on the grounds of any misunderstanding or misinterpretation of any matter set out in clause 29A.1, or his failure to discover or foresee any risk, contingency or other circumstance (including, without limitation, the existence of any adverse physical conditions or artificial obstructions) influencing or affecting the *subcontract service*.
- 29A.3 The *Subcontractor* is not released from any of the risks accepted or obligations undertaken by him under the subcontract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the *subcontract service*.

<sup>17</sup> [Note: This clause is designed to be more favourable to Amey than the standard-form NEC4 conditions. It will be important to retain this provision if the Main Contract places site risk upon Amey, but there may be exceptions, for example, where a significantly better price can be obtained from the *Subcontractor* or where it has not been possible for the *Subcontractor* to inspect the Affected Properties. Note however, that in those circumstances the *Subcontractor* may be able to recover time and money from Amey without there being any similar right for Amey under the Main Contract.]

- 29A.4 Any information, survey, report or other document which is provided by or on behalf of the *Client* or *Contractor* in connection with an Affected Property is provided by way of information only without warranty or representation as to its accuracy, reliability or completeness and the Contractor provides no warranty in relation to and has no liability arising out of or in relation to any such information, survey, report or other document or from any representation or statement, contained in such document."

### **Compliance with the Main Contract**

27B Insert a new clause 27B entitled "Compliance with the Main Contract" as follows:

- "27B.1 The *Subcontractor* is deemed to have full knowledge of the terms of the Main Contract, and the *Contractor*, if so requested by the *Subcontractor* in writing, provides the *Subcontractor* with a copy of the same or of a draft thereof (less any commercially confidential details that the *Contractor* may choose to omit). The *Subcontractor* is also deemed to have full knowledge of the terms of any schedule of modifications to the Main Contract.
- 27B.2 The *Subcontractor* shall observe, perform and comply with the *Contractor's* obligations under the Main Contract to the extent that they relate and apply to the *subcontract service* and shall perform its obligations under this subcontract at such time and in such a manner so as to allow the *Contractor* to comply with its equivalent obligations under the Main Contract.
- 27B.3 The *Subcontractor* shall indemnify and hold harmless the *Contractor* against and from any failure by the *Subcontractor* to comply with this clause 27B and/or any act or omission of the *Subcontractor* which results in any liability on the part of the *Contractor* to the Client or to Others under the Main Contract.
- 27B.4 Without prejudice to the generality of the remainder of this clause 27B, the *Subcontractor* performs its obligations under this subcontract so as not to constitute, cause or contribute to any breach by the *Client* and/or the *Contractor* of any of their obligations referred to or contained in any agreement between the *Client* and any third party and/or between the *Contractor* and any third party (or in any extract from the same) that may be contained or referred to in the Main Contract and/or in this subcontract, and the *Subcontractor* indemnifies the *Contractor* in respect of any reasonably incurred and reasonably foreseeable costs and losses that the *Contractor* incurs under or arising out of such agreements as a result of any breach by the *Subcontractor* of this clause 27B.4.
- 27B.5 The *Subcontractor* acknowledges that any breach by it of this subcontract may result in the *Contractor* committing breaches of and being liable in damages under or in relation to the Main Contract and/or other agreements, contracts and subcontracts entered into by the *Contractor* in relation to the service, and/or may cause further loss and/or expense to the *Contractor* in connection with the service, and all such damages, loss and expense are agreed to be within the contemplation of the parties hereto as being the probable results of any such breach by the *Subcontractor*.
- 27B.6 Where there is an inconsistency between the obligations of the *Subcontractor* under clause 27B.1 and the obligations of the

*Subcontractor* under the other provisions of the subcontract, the obligations of the *Subcontractor* under the subcontract shall prevail."

## **Collateral warranties**

27C Insert a new clause 27C entitled "Collateral warranties" as follows:

"27C.1 Where the Main Contract and/or any other Subcontract Document provides for the giving by the *Subcontractor* of collateral warranties to a Beneficiary, within **[14]** days from receipt of a notice from the *Contractor* that identifies the relevant Beneficiary and requires execution of such a collateral warranty, the *Subcontractor* executes and delivers to the *Contractor* or as he may direct in the form required by the Main Contract and/or the relevant Subcontract Document (with only such amendments as the *Contractor* shall agree, acting reasonably), to the Contractor as he may directs. If this subcontract is governed by the laws of Scotland, any collateral warranty delivered in accordance with this clause 27C.1 must be in Self-Proving Form.

27C.2 Where any Subcontract Document provides for the procurement by the *Subcontractor* of collateral warranties from subsubcontractors and/or subsubconsultants in favour of the *Contractor* or any other beneficiary, the *Subcontractor*, within **[7]** days from receipt of a notice from the *Contractor* that requires provision of such a collateral warranty, procures the execution and delivery to the *Contractor* of the warranty in the form required by the Subcontract Data and/or Subcontract Documents (with only such amendments as the *Contractor* shall agree, acting reasonably). If this subcontract is governed by the laws of Scotland, any collateral warranty delivered in accordance with this clause 27C.2 must be in Self-Proving Form.

### **27C.3 Condition precedent to payment**

Subject to clause 27C.4 applies, the *Subcontractor* acknowledges that delivery to the *Contractor* of every collateral warranty required pursuant to this clause 27C shall be a condition precedent to any payment in respect of the *subcontract service* to which the *Subcontractor* would otherwise be entitled under this subcontract, provided that the *Contractor* is not taken to have waived its requirement for such warranties and/or its entitlement to withhold any payments otherwise due to the *Subcontractor* if, notwithstanding the importance and materiality of the foregoing provisions, the *Contractor* fails to press and/or continue pressing the *Subcontractor* for such warranties and/or elects to make and/or continues to make interim payments pending receipt of such warranties or otherwise. The *Contractor* is entitled to insist upon the provision of such warranties and/or to deduct and/or retain the sums otherwise due to the *Subcontractor* in respect of such failure notwithstanding any previous course of dealing.

### **27C.4 Failure by subsubcontractor to provide warranty**

Where the Subcontract Data (item 12) specifies that this Clause 27C.4 applies, the amount of payment that may be withheld by the Contractor pursuant to clause 27C.3 for failure to procure a collateral warranty required from a subsubcontractor pursuant to clause 27C.2 shall be limited to the portion of the Prices attributable to the scope of the subsubcontract of the relevant subsubcontractor."

## **Environment, Social, Governance (ESG) obligations and monitoring**

27D Add a new clause 27D entitled "Environment, Social, Governance (ESG) obligations and monitoring" as follows:

- "29D.1 The *Subcontractor* acknowledges, understands and shall support the *Contractor's* Sustainability and Social Value Targets as set out in the Amey Sustainability and Social Value Strategy available on the Contractor's website <https://www.amey.co.uk/bolder-steps-together/> as amended from time to time (the "**Sustainability and Social Value Targets**").
- 29D.2 The *Subcontractor* acknowledges, understands, and shall adhere to the *Contractor's* Sustainable Procurement and Supply Chain Policy Requirements Guidance available on the *Contractor's* website [www.amey.co.uk/about-us/governance/the-amey-code-and-policies/](http://www.amey.co.uk/about-us/governance/the-amey-code-and-policies/) as amended from time to time.
- 29D.3 The *Subcontractor* shall:
- .1 set its own Sustainability Target with a target achievement date no later than the *Contractor's* target achievement date of 2040 and shall provide to the *Contractor* a copy of its plan for such achievement from time to time on request;
  - .2 continuously update its plans and shall procure that its subcontractors, advisors and stakeholders continuously update their respective plans to reflect the best available practice to achieve the aspirations of the most prevalently adopted ESG targets;
  - .3 provide data and cooperation to evidence the *Subcontractor's* compliance with this clause and progress towards its Sustainability Target and such other data as the *Contractor* may reasonably request to support the *Contractor* in evidencing its compliance with its Sustainability and Social Value Targets; and
  - .4 attend, on reasonable notice, meetings with the *Contractor's* Environment or Social Value Manager or other nominated representative to present its plan to achieve its obligations under this clause and its progress towards its Sustainability and Social Value Targets."

#### Health, safety, quality and environmental

27E Add a new clause 27E entitled "Health, safety, quality and environmental" as follows:

- "27E.1 Without prejudice to the *Subcontractor's* obligations elsewhere in this subcontract, the *Subcontractor* complies at no cost to the *Contractor* with:
- .1 the Amey Policies, and the *Subcontractor* immediately informs the *Contractor* if it cannot access the Amey Policies and/or if any of such policies and procedures conflict with any Statutory Requirements which prevail over such policies and procedures if there is any conflict;
  - .3 all health and safety and environmental Statutory Requirements relevant to the *subcontract service* and to the circumstances in which the *subcontract service* are being carried out; and



- .4 all reasonable requirements of the *Contractor* to the extent that such requirements are necessary for compliance by the *Contractor* with his obligations under all health and safety and environmental Statutory Requirements or obligations under the Main Contract.
- 27E.2 Save where alternative requirements are specified elsewhere in this subcontract, the *Subcontractor* operates a system of quality management which meets the requirements of ISO 9001:2015 (or such amendment to, or re-enactment or restatement of, the same as may apply from time to time) and conforms with the requirements of any quality system included amongst the *numbered documents*.
- 27E.3 Insofar as any design is carried out as part of this subcontract, the *Subcontractor* notes upon all drawings, prior to their issue, all of the material hazards and risks that arise from the design depicted upon the drawings with regard to construction, maintenance, occupation and demolition. The hazards and risks so noted are resolved in accordance with the CDM Regulations and the *Subcontractor* notes the resulting hazards and risks upon the drawings. The *Subcontractor* acknowledges that it is an absolute requirement that hazards and risks are noted and resolved throughout the design process in order to extend into the co-ordination of work produced by designers and the supply chain.
- 27E.4 Without prejudice to any other rights and remedies the *Contractor* may have (whether under, pursuant to or arising out of this subcontract, at common law, tort, delict, under statute or otherwise), if the *Subcontractor* is in breach of its obligations under clauses 27E.1, 27E.2 or 27E.3 the *Contractor* is entitled to instruct the *Subcontractor* to stop or not to start any work for such time or times and in such manner as the *Contractor* may specify and/or take such action as it reasonably considers is necessary until such breach has been remedied and the *Contractor* is satisfied that the *Subcontractor* is able to perform its obligations under this subcontract. The *Subcontractor* reimburses to the *Contractor* any costs, losses, damages and/or expenses suffered or incurred by the *Contractor* as a result of the *Contractor* exercising its right under this clause 27E.4 to instruct the *Subcontractor* to stop or not to start any work within five (5) Business Days of the *Contractor's* demand for the same, and the *Subcontractor* is not entitled to any additional payment (and there shall be no addition to the Prices) or to any changes to the timing of the *subcontract service* or Task Completion Dates as a result of the *Contractor* exercising its rights under this clause 27E.4.
- 27E.5 Within the time reasonably required in writing by the *Contractor* the *Subcontractor* provides to the *Contractor* such information in respect of the *subcontract service* as is reasonably necessary to demonstrate compliance by the *Subcontractor* with clauses 27E.1 to 27E.4.
- 27E.6 Within the time reasonably required in writing by the *Contractor*, the *Subcontractor* provides to the *Contractor* such information in respect of the *subcontract service* as is reasonably necessary to enable the *Contractor* to comply with its obligations under the Main Contract and the CDM Regulations relating to the health and safety file (as defined in the CDM Regulations).
- 27E.7 In respect of the CDM Regulations the *Contractor* ensures that any updates or revisions of the Construction Phase Plan are made available to the *Subcontractor* for review and inspection, and the *Subcontractor*



is entitled to make a copy of the same for the purposes of carrying out the *subcontract service*."

### **Training and competency**

27F Insert a new clause 27F entitled "Training and competency" as follows:

"The *Subcontractor* carries out checks on the training and competency of the *Subcontractor's* Persons in respect of each element of the *subcontract service* and provides evidence of such checks as the *Contractor* may require."

### **Incidents**

27G Insert a new clause 27G entitled "Incidents" as follows:

"27G.1 The *Subcontractor* supplies to the *Contractor* copies of any communications with the Health & Safety Executive, the Environment Agency, the Scottish Environment Protection Agency or local authorities (or any other bodies having jurisdiction regarding the health and safety or the environment) which relate to any incidents during the course of Providing the Subcontract Service which from time to time arise.

27G.2 The *Subcontractor* indemnifies and holds harmless the *Contractor* from and in respect of any fees, damages, costs, losses or expenses suffered or incurred by the *Contractor* arising out of any liability the *Contractor* has to pay the Health & Safety Executive any fee for intervention (whether pursuant to the Health and Safety (Fees) Regulations 2012 or otherwise), to the extent arising out of or in connection with any act, omission, negligence or default by the *Subcontractor* (or any of the *Subcontractor's* Persons) in performing its obligations under this subcontract.

### **Security and safety**

27H Insert a new clause 27H entitled "Security and safety" as follows:

"Subject to clause 80.1, the *Subcontractor* acknowledges and agrees that the *Contractor* has no responsibility to the *Subcontractor* for the security and safety of any temporary works, plant, tools, vehicles, equipment, clothing or other protective equipment or other property belonging to or provided by the *Subcontractor* or the *Subcontractor's* Persons or of any materials or goods of the *Subcontractor* (including any things intended for incorporation into the *subcontract service*) whilst stored at the *Contractor's* premises, any Affected Property or the Service Areas."

### **Employment matters**

27I Insert a new clause 27I entitled "Employment matters" as follows:

27I.1 The *Subcontractor* at all times complies with all applicable laws relating to the employment eligibility of all *Subcontractor's* Persons engaged by the *Subcontractor*, including but not limited to compliance with Sections 15 - 25 of the Immigration, Asylum and Nationality Act 2006 (the "**Act**").

27I.2 The *Subcontractor* provides to the *Contractor* immediately upon request, all necessary employee records to demonstrate that the *Subcontractor* has complied with its obligations under the Act.

- 271.3 If the *Subcontractor* does not comply with clause 271.2, the *Contractor* is permitted to enter upon the *Subcontractor's* premises, upon giving reasonable notice, for the purpose of ascertaining that the *Subcontractor* has maintained all necessary employee records in compliance with the *Subcontractor's* obligations under the Act.
- 271.4 Without prejudice to clause 19F, the *Subcontractor*, at the request of the *Contractor*, ceases to employ on the *subcontract service* any one or more of his *Subcontractor's* Personnel to whom the *Contractor* may reasonably object or whose presence on the *subcontract service* may contravene the requirements of the subcontract or the Main Contract and the *Subcontractor* shall replace such *Subcontractor's* Personnel immediately, at the *Subcontractor's* expense, with others to whom the *Contractor* has no objection. Any cost, losses or expense incurred by reason of any delays the timing of the *subcontract service* caused by such replacement shall be borne by the *Subcontractor*.
- 271.5 The *Subcontractor* represents and warrants that it is an independent contractor. Nothing in this subcontract renders the *Subcontractor* or any of the *Subcontractor's* Personnel an employee, "worker" (as defined under the Working Time Regulations 1998), agent or partner of the *Contractor* or (as the case may be) of a Replacement Contractor and the *Subcontractor* does not hold itself out as such and procures that the *Subcontractor's* Personnel do not hold themselves out as such.
- 271.6 The *Contractor* is not vicariously liable for the acts or omissions of the *Subcontractor* or any of the *Subcontractor's* Persons and the *Contractor* has no liability in respect of any damage, death or injury suffered by the *Subcontractor's* Persons in connection with the provision of the *subcontract services*, except to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the *Contractor* or any of the *Contractor's* Persons.
- 271.7 Neither the *Subcontractor* nor the *Subcontractor's* Persons are entitled by virtue of this subcontract to bind the *Contractor* or to contract in the name of or create liability against the *Contractor* in any way and for any purpose except as expressly authorised in writing by the *Contractor*.
- 271.8 The *Subcontractor*:
- .1 is solely responsible for paying to the *Subcontractor's* Persons the fees or remuneration and benefits (including, but not limited, to salary, holiday pay and sick pay if applicable) and for reimbursing the expenses to which they are entitled by reason of their involvement with the *subcontract service*, and is solely responsible for any costs associated with the provision of such fees, remuneration, benefits and expenses to the *Subcontractor's* Persons (with no recourse to the *Contractor*);
  - .2 makes deductions and accounts to relevant authorities for any Income Tax on employment income and any national insurance Contributions in respect of the *Subcontractor's* Persons' fees or remuneration; and
  - .3 maintains at its own cost appropriate levels of employer's liability and public liability insurance as appropriate in respect of the *Subcontractor's* Persons.
- 271.9 The *Subcontractor* indemnifies the *Contractor* on demand and keeps it indemnified at all times against any liability, loss, damage, costs

(including legal costs on an indemnity basis), claims, proceedings and expenses of whatsoever nature incurred or suffered by the *Contractor* or (as the case may be) by a Replacement Contractor arising from the *Subcontractor's* or the *Subcontractor's* Persons' performance of or breach of the *Subcontractor's* obligations or warranties under this subcontract including, without limitation:

- .1 any Income Tax, National Insurance Contributions (including secondary contributions to the extent permitted by law (including any interest, penalties or gross-up thereon)) arising in respect of the *Subcontractor's* Persons for which the *Contractor* is called upon to account to the relevant taxing authority;
- .2 any act or neglect, breach of statutory duty, omission or default of the *Subcontractor* or the *Subcontractor's* Persons and any claim that the *Contractor* is vicariously liable for the acts of the *Subcontractor's* Persons;
- .3 any liability for any employment related claim or any claim based on worker status brought by *Subcontractor* or *Subcontractor's* Persons arising out of or in connection with the provision of the *subcontract service*;
- .4 any injury suffered by any of the *Subcontractor's* Persons;
- .5 any claims that may arise under or pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- .6 any breach resulting in a successful claim by a third party; and
- .7 any liability for a penalty under Sections 15 to 25 of the Act."

## Competition law

27J Insert a new clause 27J entitled "Competition law" as follows:

"27J.1 The *Subcontractor* warrants that its tender in respect of this subcontract was a bona fide offer, intended to be competitive and that in respect of this subcontract the *Subcontractor* was not a party to (or concerned in) any agreement, arrangement, concerted practice or course of conduct which infringes:

- .1 Chapter I of the Competition Act 1998;

or, where and to the extent applicable to the *Subcontractor's* operations,

- .2 Article 101 of the Treaty on the Functioning of the European Union; or
- .3 the competition law Statutory Requirements or practice of any other jurisdiction.

27J.2 The *Subcontractor* acknowledges and agrees that the *Contractor* has, in its consideration of the *Subcontractor's* tender for this subcontract, and, in any subsequent actions, relied upon the warranties stated in clause 27J.1."

## Data protection

27K Insert a new clause 27K entitled "Data protection" as follows:

27K.1 The *Subcontractor* agrees that, in relation to performing its obligations under the subcontract, it will comply with all relevant legislation and regulations including but not limited to

- the Data Protection Act 2018 (including the Data Protection principles),
- all amendments to the Data Protection Act 2018,
- the General Data Protection Regulation (“**GDPR**”) and any legislation that replaces or converts or implements that into domestic law and
- any regulations or requirements made by any governmental authority or equivalent body,

together, the “**Data Protection Legislation**”.

27K.2 The Parties anticipate that the *Contractor* shall act as a controller and the *Subcontractor* shall act as a processor. The Parties acknowledge and agree that Schedule 3 (*Data Protection Particulars*) is an accurate description of (a) the subject matter and duration of the processing; (b) the nature and purpose of the processing; (c) the type of Personal Data being processed; and (d) the categories of data subjects. Any term used in this clause 27K which is given a meaning in the Data Protection Legislation shall be construed according to its respective meaning.

27K.3 The *Subcontractor* agrees to use the personal data and special category personal data (together “**Personal Data**”), for the purposes of performing its obligations under the subcontract only. Unless required by law, the *Subcontractor* must:

- keep the Personal Data strictly confidential,
- not publish the Personal Data,
- not give the Personal Data to anyone else unless authorised by the *Contractor* (including any sub-processors),
- only give access to the Personal Data to officers, employees, and partners who need to know or use it and ensure that each of its officers, employees and partners meet and are bound by written confidentiality provisions and
- not copy, distribute or commercially exploit the Personal Data.

Such personal and sensitive personal data may include information about children and data subjects with criminal convictions.

27K.4 The *Subcontractor* agrees to comply with any relevant code of conduct relating to the *subcontract service* that has been approved by the Information Commissioner’s Office in addition to any Statutory Requirement.

27K.5 The *Subcontractor* shall ensure that only such of its employees, workers or agents who may be required by it to assist in meeting its obligations under the subcontract shall have access to the Personal Data. The *Subcontractor* shall ensure that all its employees, workers or agents used to provide the *subcontract service* have undergone

appropriate and suitable training in the law of data protection and in the care and handling of Personal Data.

27K.6 The *Subcontractor* agrees to indemnify and keep indemnified the *Contractor* against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities of whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the *Contractor* and arising out of or in connection with any breach by the *Subcontractor*, its employees, representatives, agents or sub-contractors, of its obligations under the subcontract.

27K.7 The *Subcontractor* warrants that it will

- process the Personal Data only to the extent and in such manner as is necessary for the purposes specified in the subcontract, and only on the *Contractor's* written instructions from time to time,
- process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including Data Protection Legislation),
- take and maintain appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data (in order to comply with the security obligations in Data Protection Legislation),
- ensure any sub-processors (as agreed with the *Contractor*) comply with the obligations set out in this clause 27K. The *Subcontractor* further warrants that it is responsible for any processing conducted by the sub-processor(s),
- assist the *Contractor*, where instructed, to comply with any requests from Data Subjects exercising their rights under the Data Protection Legislation (including their rights to access their information, rectify, erase or object to the processing of their personal data),
- assist the *Contractor*, where instructed, to (i) carry out a data protection impact assessment, and (ii) comply with its obligations under Article 36 of the GDPR,
- keep a record of the processing it carries out under the subcontract,
- assist the *Contractor* with its security and data breach obligations in respect of the Personal Data, including notifying the *Contractor* without undue delay (and in any event within twenty-four (24) hours) if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of any Personal Data (including a personal data breach, as defined in the GDPR), and otherwise assist the *Contractor* to comply with its obligations under Articles 32 - 34 of the GDPR,
- at the *Contractor's* option, return or delete the Personal Data or any of it at the end of the term of the subcontract, except as required by law, and

- promptly inform the *Contractor* if, in the opinion of the *Subcontractor*, the *Contractor's* instructions breach Statutory Requirements or EU law, and/or it is required by Statutory Requirements or EU law to act other than in accordance with the *Contractor's* instructions.

27K.8 The *Subcontractor* will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the auditors of the *Contractor* upon written request and reasonable notice in order to ascertain compliance with relevant laws and the terms of the subcontract.

### **Nuisance, trespass or interference**

27L Insert a new clause 27L entitled "Nuisance, trespass or interference" as follows:

"The *Subcontractor* at all times prevents any public or private nuisance, trespass or other interference with the rights of any statutory undertaker and of any adjoining or neighbouring land owner, tenant or occupier arising out of the carrying out of the *subcontract service* or any part thereof. The *Subcontractor* is liable for and indemnifies the *Contractor* against any expense, liability, loss, claim or proceedings whatsoever and howsoever arising resulting from any such nuisance, trespass or interference, save only where and to the extent that such nuisance, trespass or interference is a consequence of an instruction changing the Subcontract Scope or other instruction of the *Contractor* and which could not have been avoided by the *Subcontractor* using all reasonable and practicable means."

### **Updates to documentation**

27M Insert a new clause 27M entitled "Updates to documentation" as follows:

"At or before Task Completion in relation to a Task, the *Subcontractor* shall, if requested by the *Contractor*, without charge, update any manuals, documentation, as-built drawings or BIM models as are specified in the Subcontract Scope, or as the *Contractor* may reasonably require, providing sufficient information to enable the *subcontract services* and the Affected Properties to be properly maintained and operated."

### **Non-discrimination**

27M Insert a new clause 27M as follows:

"27M.1 The *Subcontractor* provides, within 14 days of any such request from the *Contractor*, such information as the *Contractor* requires in order to discharge any obligation of the *Contractor* in the Main Contract or otherwise at law relating to the diversity, equality and non-discrimination of persons engaged on the *Contractor's* supply chain, provided always that this clause 29N shall not require the *Subcontractor* nor any *Subsubcontractor* to breach any law relating to data protection.

27M.2 The *Subcontractor* ensures that any *Subsubcontract* relating to the *subcontract service* includes a provision in terms equivalent to this clause 27M, *mutatis mutandis*."

### **The Contractor's Policies**

27N Insert a new clause 27N as follows:

- "27N.1 The *Subcontractor* shall comply with, and shall procure that the *Subcontractor's* Persons shall comply with, the Amey Policies and any other policies and procedures notified by the *Contractor* to the *Subcontractor* from time to time.
- 27N.2 Any alleged or suspected violation of the Amey Policies by any of the *Subcontractor's* Persons in the performance of this subcontract shall be promptly reported by the party with knowledge of the alleged or suspected violation to the other party. The *Subcontractor* shall permit the *Contractor* and any of the *Contractor's* group companies to conduct an investigation into the matter and shall co-operate with any such investigation and shall take whatever action the *Contractor* (or such *Contractor's* group companies as relevant) deems to be the appropriate correction action with respect to any such violation by the *Subcontractor's* Persons."

### Promotional communications and marketing

27O Insert a new clause 27O as follows:

- "27O.1 Neither party shall, and the *Contractor* and the *Subcontractor* shall procure that its affiliated companies and the *Contractor's* Persons and *Subcontractor's* Persons respectively shall not:
- (a) make or authorise any public or private announcement or communication including but not limited to promotional communications, media relations, social media and marketing activity such as sponsorship, advertising, digital communications, case studies or corporate presentations ("**Promotional Communications**" concerning this subcontract, the *subcontract service* or their relationship with the other party; or
  - (b) refer to or use any business name, logo or trade marks (whether registered or not) of the other party or its affiliated companies in any Promotional Communications: without the prior written approval of the other party and, in the case of the *Subcontractor*, without the prior written approval of the Amey Group Corporate Communications team located at the company's head office and without complying with the written instructions of the Amey Group Corporate Communications team, except in each case as required by law."

### IR35

27P Insert a new clause 27P as follows:

- "27P.1 Unless specifically authorised by the *Contractor* in writing to do so, the *Subcontractor* shall ensure (and shall ensure that all or any other third parties ensure on behalf of the *Subcontractor*), that none of the *Subcontractor's* Persons will be supplied or otherwise allowed to be utilised in the undertaking of any *subcontract service* in relation to the Main Contract service if they are an IR35 Contractor.
- 27P.2 Where, as per clause 27P.1 above, the *Contractor* provides written authorisation to the *Subcontractor* that an IR35 Contractor can be utilised in the undertaking of any *subcontract service*, prior to the IR35 Contractor commencing any *subcontract service*, the *Subcontractor* shall provide (and shall ensure that all or any other third parties provide on behalf of the *Subcontractor*) all such information and documentation as is reasonably required by the *Contractor* to make a determination as

to whether the IR35 Contractor would be regarded for Income Tax purposes as an employee of the *Contractor* under Part 2 Chapter 10 of ITEPA.

- 27P.3 In the event that the *Contractor* determines that an IR35 Contractor has been supplied or otherwise engaged, it will be considered that there has been a material breach of this subcontract.
- 27P.4 The *Subcontractor* shall pay all Corporation Tax, Income Taxes, National Insurance Contributions, VAT and other taxes, duties, levies, charges and contributions (and any interest or penalties thereon) whatsoever properly payable by the *Subcontractor* in respect of payments to the Subcontractor's Persons. In particular, and without limitation, the *Subcontractor* shall comply with any requirement to make deductions of Income Tax and National Insurance Contributions at source and to pay employer National Insurance Contributions and Apprenticeship Levy in respect of each and any of the Subcontractor's Persons.
- 27P.5 The *Subcontractor* shall indemnify the *Contractor* and keep the *Contractor* indemnified in full against any and all expense, liability, costs, claims, loss and proceedings of any kind and character howsoever arising in connection with any breach by the *Subcontractor* of this clause 27P. The *Subcontractor* shall also indemnify the *Contractor* and keep the *Contractor* indemnified in full against any liability of the *Contractor* to account for deductions of Income Tax, and/or employee National Insurance Contributions, or to make payment of employer National Insurance Contributions or Apprenticeship Levy (and in each case against any liability of the *Contractor* to pay interest or penalties in respect of such sums), in respect of services provided by, or payments made to or in respect of, any Subcontractor's Persons, in each case regardless of whether or not the *Contractor* has or is deemed by HM Revenue & Customs to have complied with its own obligations under Chapter 10 of Part 2 Income Tax (Earnings and Pensions) Act 2003 or otherwise.
- 27P.6 The *Subcontractor* acknowledges that compliance by the *Subcontractor* with the obligations set out in this clause 27P shall be a condition precedent to any payment in respect of the *subcontract service* to which the *Subcontractor* would otherwise be entitled under this subcontract. Without prejudice to any rights or remedies otherwise available to the *Contractor* under this subcontract or at law, in the event that the *Subcontractor* fails to comply with the obligations set out in clause 27P and the *Contractor* incurs liability, loss or damages as a result, the *Contractor* shall be entitled to deduct such liability, loss or damages incurred in respect of such failure from any sums otherwise due to the *Subcontractor* notwithstanding any previous course of dealing."

## TUPE

27Q Insert a new clause 27Q as follows:

- "27Q.1 The *Contractor* and the *Subcontractor* acknowledge and agree that the provision of, or cessation of, all or part of the *subcontract service* at any time and any arrangements contemplated by the subcontract are not intended to constitute a relevant transfer for the purposes of the TUPE Regulations.
- 27Q.2 The *Subcontractor* will indemnify, keep indemnified and hold harmless the *Contractor*, the *Client* and any Successor Subcontractor against any



Liabilities arising out of, or in connection with, any claim or decision by a court or tribunal that the contract of employment of any Subcontractor's Personnel or any Liabilities in relation to the Subcontractor's Personnel have transferred to the *Contractor*, the *Client* or any Successor Subcontractor under the TUPE Regulations or otherwise, including any Liabilities for failure to inform and consult under the TUPE Regulations. Without prejudice to clause 27R.1, if any contract of employment of any of the Subcontractor's Personnel has effect (or is argued to have effect) as if originally made between the Subcontractor's Personnel and the *Contractor*, the *Client* or any Successor Subcontractor as a result of the TUPE Regulations or otherwise at any time (including during or at the end of the term of this subcontract or on the termination of the *Subcontractor's* obligation to Provide the Subcontract Service (whether partial or whole) for any reason), the *Contractor*, the *Client* or any Successor Subcontractor may, on becoming aware of that effect (or argued effect) terminate the contract of employment of the Subcontractor's Personnel, in which case the *Subcontractor* will indemnify, keep indemnified and hold harmless the *Contractor*, the *Client* and any Successor Subcontractor against any Liabilities arising out of such termination and against any sum payable to or in respect of such Subcontractor's Personnel prior to termination of employment."

### Starting, Completion and Key Dates

30 At the end of clause 30, add the following clauses:

"30.4 The *Subcontractor* notifies the *Contractor* in writing of the date when in his opinion Task Completion has been achieved in relation to a Task and the *Subcontractor* has complied with the following:

- .1 all documents required to be provided by the *Subcontractor* pursuant to clause 27M have been so provided;
- .2 any/all operation and maintenance manuals and any other document or thing required to be provided by the *Subcontractor* pursuant to the Subcontract Documents have been so provided;
- .3 the *Subcontractor* has fully complied with clause 27E.6 (if applicable).

If the *Contractor* considers that such work is not complete and/or that there has not been such compliance then the *Contractor* is entitled to give written notice of such decision to the *Subcontractor*, giving reasons and Task Completion shall not occur until the Subcontractor has complied with this clause 30.4.

30.5 The *Subcontractor* proceeds regularly and diligently to provide the *subcontract service* in accordance with this subcontract, and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the *subcontract service*.

30.6 If in the reasonable opinion of the *Contractor* the *Subcontractor* is failing to carry out the *subcontract service* or any Task in accordance with this clause 30 or fails to comply with clause 27E, the *Contractor* is entitled to, upon giving notice to the *Subcontractor* and without prejudice to any of the *Contractor's* other rights and remedies:

- .1 perform the *subcontract service* or the relevant Task, whether by itself or by others, and/or

- .2 issue instructions to the *Subcontractor* removing the relevant part(s) of the *subcontract services* or Task(s) from the subcontract, and may employ others to carry out such part(s) or Task(s),

and all costs incurred and monies expended in connection therewith (including without limitation the *Contractor's* reasonable preliminaries and overheads in relation to the same) is either taken into account in the calculation of the Prices or is recoverable by the *Contractor* from the *Subcontractor* as a debt. For the avoidance of doubt, the *Subcontractor* is not entitled to any additional payment under this subcontract or otherwise as a result of such action by the *Contractor* under this clause 30.6.

- 30.7 If, for any reason which does not entitle the *Subcontractor* to a change to a Task Completion Date, the rate of progress of a Task is at any time in the opinion of the *Contractor* too slow to ensure compliance with the *Subcontractor's* obligations under this clause 30, the *Contractor* is entitled to notify the *Subcontractor* in writing accordingly. Upon receipt of any such notice, the *Subcontractor* forthwith provides to the *Contractor* his proposals for measures to expedite the progress of the relevant Task so as to ensure compliance with the *Subcontractor's* obligations under this clause 30. The *Subcontractor* is not entitled to any additional payment (and there shall be no addition to the Prices) or changes to any Task Completion Dates for thereafter taking any such measures."

#### **The Subcontractor's plan**

- 31.3 In clause 31.3, delete the last paragraph.

#### **Revising the Subcontractor's plan**

- 32.1 Add the following bullet point after the first bullet point:

- "the effect of implemented compensation events"

- 32.2 Delete the third bullet point and replace with "Not used".

Delete the last bullet point and replace with:

"in accordance with the requirements set out in the Subcontract Data."

#### **Tests and inspections**

- 41.6 At the end of the clause insert "or it is deducted from amounts due to be paid to the *Subcontractor* by the *Contractor*".

#### **Correcting Defects**

- 43.5 Insert a new clause 43.5 as follows:

"Notwithstanding the provisions of clauses 43.1 to 43.4, the *Subcontractor* carries out and completes at his own cost all works to rectify Defects in the *subcontract service* for which the *Contractor* has liability under or arising from the Main Contract (whether or not such defects arise before or after the end of the Subcontract Service Period or are patent defects or are latent defects and in respect of which the limitation period under the Main Contract has not expired) in conformity with the timescales and procedures set out in and all reasonable instructions and requirements of the *Contractor*. Without prejudice to the

generality of this clause 43.5, and notwithstanding any other provision of this subcontract, the *Subcontractor* rectifies all Defects arising in the *subcontract service* in such timely manner and in accordance with the Contractor's obligations under the Main Contract."

## 5. Payment

Delete clause 5 in its entirety and replace as follows. For the avoidance of doubt, the amendments to clause 5 set out in the applicable Main Option Clause shall still apply to amend and supplement the following provisions.

### 50 Assessing the amount due

"50A.1 It is a condition precedent to any amount (including any release of retention and any payments following the final assessment) becoming due to the *Subcontractor* that the *Subcontractor* shall have provided to the *Contractor*:

- the subcontract, duly executed and delivered by the *Subcontractor* (and, if this subcontract is governed by the laws of Scotland, it must be delivered in Self-Proving Form),
- documentary evidence that the insurances required under the subcontract are being maintained at the relevant date of payment as requested in accordance with clause 84.1,
- the Subcontractor's policy on how it will address health and safety (to the extent not already set out in the subcontract documents),
- a *Subcontractor* performance bond (Option X13) given by a surety acceptable to the Contractor and in the amount required in accordance with the Subcontract Data Part 1 and Option X13 (in the form set out in Numbered Document 6 (*Required Form of Performance Bond*) and/or a Subcontractor ultimate holding company guarantee (Option X4) (in the form set out in Numbered Document 5 (*Required form of Ultimate Holding Company Guarantee*), if required,
- on each occasion on which the *Subcontractor* makes an application for payment (including any release of retention and payments following the final assessment), a fully and correctly completed Application for Payment containing such additional detail as is required in the Subcontract Scope, and clauses 50.2 and 50.3, and
- a current tax certificate or original certifying document as appropriate.

50A.2 Notwithstanding any other provision of this subcontract, if, and to the extent that the *Contractor* does not rely on this clause 50A and/or does not assert that an amount has not become due as a result of any, or all, of the conditions precedent and/or requirements not being satisfied under this clause 50A, then it shall not be deemed to have waived the relevant conditions precedents and/or requirements of this clause 50A and the Parties acknowledge that the *Contractor* shall be entitled to rely on this clause 50A (and the conditions precedents and requirements therein) in relation to any subsequent application, or claim for, payment pursuant to clauses 50, 51, 53 or otherwise.

50.1 Following commencement of the *subcontract service*, the Subcontractor, no later than one (1) Working Day prior to the next Assessment Date and thereafter no later than one (1) Working Day prior to any subsequent Assessment Date,

submits to the Contractor an Application for Payment. The Application for Payment shall include all of the relevant details required under clauses 50.2 and 50.3.

The first assessment date is the date stated in the Subcontract Data Part 1. Later assessment dates occur at intervals of one calendar month from the previous assessment date until:

- four weeks after the end of the Subcontract Service Period; or
- the *Contractor* issues a termination certificate,

(each an “**Assessment Date**”).

The *Subcontractor* shall not re-submit or duplicate the same or substantially the same Application for Payment. Any re-submission of substantially the same Application for Payment shall not constitute a valid application for the purposes of this clause 50.1.

An Application for Payment that is not compliant with the requirements of this clause 50.1 (including where submitted later than one (1) Working Day prior to the relevant Assessment Date) shall not be considered to be a validly submitted Application for Payment under this subcontract.

50.2 Without prejudice to clauses 50.1 and 50.3, the *Subcontractor* shall include in any Application for Payment such details as the *Contractor* may reasonably request in order to ascertain the amount due.

50.3 Each Application for Payment submitted under clause 50.1 shall contain the following details:

- the Price for Service Provided to Date,
- plus other amounts to be paid to the *Subcontractor*,
- less amounts to be paid by or retained from the *Subcontractor*,
- less the value of any work done, goods or materials supplied or services rendered which are not provided in accordance with the subcontract, and
- less such sum that the *Contractor* is or may be liable to pay to the Construction Industry Training Board in respect of the *Subcontractor's* employment under the subcontract (when the *subcontract service* or part thereof is (or is reasonably likely to be) deemed by the Construction Industry Training Board to be labour only).

Any tax which the Statutory Requirements require the *Contractor* to pay to the *Subcontractor* is included in the amount due.

50.4 If the *Subcontractor* does not submit an Application for Payment in accordance with the requirements of clause 50.1 at least one (1) Working Day prior to the relevant Assessment Date, the amount due as at the Due Date is the lesser of:

- the amount the *Contractor* or the *specified person* assesses as due at the relevant Due Date (any such determination to be notified to the *Subcontractor* no later than five (5) days after the relevant Due Date that would have applied had a valid Application for Payment been submitted in accordance with clause 50.1), assessed as though the *Subcontractor* had submitted a valid Application for Payment before the Assessment Date and
- the amount due at the previous Due Date.

- 50.5 If no plan is identified in the Subcontract Data, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the Subcontractor has submitted a first plan to the *Contractor* for acceptance showing the information which the subcontract requires.
- 50.6 Subject to the *Subcontractor* having provided an Application for Payment in accordance with clause 50.1 (but without prejudice to clause 50.4), the *Contractor* or the *specified person* no later than five (5) days after the relevant Due Date following the Assessment Date, issues a Payment Notice to the *Subcontractor* specifying the Notified Sum and the basis on which the Notified Sum has been calculated and such Notified Sum shall be calculated by the *Contractor* or the *specified person* in accordance with the subcontract (taking account, where appropriate, the information contained in the *Subcontractor's* Application for Payment).
- 50.10 If the *Subcontractor* submits a valid Application for Payment in accordance with clause 50.1, but the *Contractor* or the *specified person* fails to issue a Payment Notice in accordance with clause 50.6 by the date five (5) days after the relevant Due Date following the Assessment Date, the Notified Sum shall (subject to any Pay Less Notice issued pursuant to clause 51.8) be the sum stated in the *Subcontractor's* Application for Payment.
- 50.11 In any Payment Notice, the *Contractor* (or the *specified person*) may delete, correct or modify any sum previously determined by the *Contractor* (and/or the *specified person*) as due for payment to the *Subcontractor*, and any overpayments made to the *Subcontractor* shall be retained from sums due to the *Subcontractor* or shall otherwise be recoverable from the *Subcontractor* as a debt.
- 50.12 All sums payable by or to the *Contractor* or the *Subcontractor* are exclusive of Value Added Tax ("**VAT**"). Subject to Clause 50.12A, in relation to each payment to the *Subcontractor* for any supply made under the subcontract:
- (1) the *Subcontractor* shall, within five (5) days following the issue by the *Contractor* of a Payment Notice (or, if the *Contractor* fails to issue a Payment Notice, within five (5) days following the last date on which the *Contractor* was entitled to issue a Payment Notice), issue to the *Contractor* an appropriate and valid VAT invoice in respect of such supply, including (unless notice has been given under clause 50.14) a statement that the reverse charge applies to the supply; and
  - (2) subject to the *Subcontractor* complying with clause 50.12(1) and the *Contractor* giving notice pursuant to clause 50.14 that the reverse charge does not apply to a supply, the *Contractor* shall, in addition, be obliged to pay to the *Subcontractor* the amount of any VAT properly chargeable in respect of such supply.
- If the *Subcontractor* is a registered person within the meaning of the current regulations regarding VAT, upon entering into the subcontract, it immediately informs the *Contractor* of its registration number and both the *Subcontractor* and the *Contractor* carry out their respective responsibilities under the VAT regulations.
- 50.12A Where the Subcontract Data Part 1 states that a *payment platform* is applicable, the *Subcontractor* shall not be required to submit an invoice to the *Contractor* in respect of any payment due under this subcontract, and the *Contractor* shall arrange payment of the Notified Sum or the amount notified in accordance with clause 51.8 on or before the Final Date for Payment via the *payment platform*.

- 50.13 If the *Contractor* is a “contractor” for the purposes of the Construction Industry Scheme (“**CIS**”) under the Finance Act 2004, or if at any time the *Contractor* becomes such a “contractor”, the obligation of the *Contractor* to make any payment under the subcontract is subject to the provisions of the CIS.
- 50.14 In the event that the *Contractor* becomes aware that the reverse charge does not apply to a supply made under the subcontract, the *Contractor* shall make a written notification to this effect to the *Subcontractor* with, or not later than the issue of, the Payment Notice (or, if the *Contractor* fails to issue a Payment Notice, as soon as possible following the last date on which the *Contractor* was entitled to issue a Payment Notice) relating to such supply.
- 51 Payment**
- 51.1 The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Subcontractor* to the *Contractor* if the change reduces the amount due. Other payments are made by the *Contractor* to the *Subcontractor*. The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Contractor*’s certificate. Payments are in the currency of the subcontract unless otherwise stated in the subcontract.
- 51.2 If a certified payment is late, or if a payment is late because the *Contractor* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- 51.3 If an amount due is corrected in a later certificate:
- in relation to a mistake or a compensation event,
  - because a payment was delayed by an unnecessary delay to a test or inspection done by the *Contractor*; or
  - following a decision of the Adjudicator or the tribunal,
- interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.
- 51.4 Interest is calculated on a daily basis at the interest rate and is simple interest. The Parties agree that this clause 51.4 is a substantial remedy for late payment of any sum payable under the subcontract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 51.5 Any tax which the law requires a Party to pay to the other Party is added to any payment made under the subcontract.
- 51.6 Provided that a valid Application for Payment has been issued in accordance with clause 50.1 by reference to the relevant Assessment Date (or where the *Contractor* or the *specified person* has elected to issue a Payment Notice under clause 50.4), then the Due Date in relation to the applicable Notified Sum shall be the *specified number of days* following the relevant Assessment Date (or, if the *specified number of days* is not defined in the Subcontract Data Part 1, **[14 days]** following the relevant Assessment Date).
- 51.7 Provided that a valid Application for Payment has been issued in accordance with clause 50.1 by reference to the relevant Assessment Date (or where the *Contractor* or the *specified person* has elected to issue a Payment Notice under

clause 50.4), then the Final Date for Payment of the applicable Notified Sum is the *specified number of days following* the Due Date (or, if the *specified number of days* is not defined in the Subcontract Data Part 1, **[28 days]** following the relevant Due Date).

51.8 Not later than one (1) day before the relevant Final Date for Payment, the *Contractor* or the *specified person* may give a written notice to the *Subcontractor* of its intention to pay less than the Notified Sum and such notice shall set out the sum that the *Contractor* or the *specified person* considers to be due on the date such notice is served and the basis on which that sum is calculated. For the avoidance of doubt, the *Contractor* or the *specified person* gives such written notice even where the sum considered to be due on the date of the notice may be zero (0).

51.9 All payments in respect of the subcontract are made in accordance with the provisions of the Construction Industry Scheme under the Finance Act 2004 (including any amendment or replacement of the same). The *Contractor* shall be entitled to deduct the amount of any levy by the Construction Industry Training Board, where applicable, from any sums otherwise due to the *Subcontractor*, and the *Subcontractor* has included in the Fee for the amount of any such levy.

## **52 Defined Cost**

52.1 All the *Subcontractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Subcontract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

## **56 Client Insolvency**

56.1 Notwithstanding anything to the contrary elsewhere in the subcontract if the *Client* (or any other party responsible for making payments under the *main contract*) is or becomes Insolvent then the *Contractor* shall not be obliged to make any further payment to the *Subcontractor* of any amount which is due or may become due to the *Subcontractor* (unless the *Contractor* has received payment in respect thereof from the *Client* and then only to the extent of such receipt). The *Contractor* shall not be required to make payment to the *Subcontractor* of sums otherwise due under the subcontract where the *Subcontractor* has become Insolvent and either:

- the *Contractor* has issued a notice under clause 51.8; or
- the *Subcontractor* has become Insolvent after the last date upon which a notice under clause 51.8 could validly be issued under the subcontract in respect of an amount due.

## **57 Set-off**

57.1 Subject to compliance with clause 50.6 or 51.8 and without prejudice to any other rights and remedies which the *Contractor* may possess (including, but not limited to, the *Contractor's* common law right of set-off), the *Contractor* may, in calculating the sums due for payment to the *Subcontractor* under this subcontract, take into account the amount or estimated amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the *Contractor* (or any company within the *Contractor's* Group) may have against the *Subcontractor* under or arising out of this subcontract or any other subcontract to which the *Contractor* (or the relevant company within the *Contractor's* Group) and the *Subcontractor* are a party. The foregoing entitlement

is in addition to and not in substitution for any other rights of counterclaim, set off or abatement.

- 57.2 If a dispute arises concerning (in whole or in part) an alleged failure by the *Contractor* to pay a Notified Sum to the *Subcontractor* under or in connection with this subcontract, the *Contractor* shall be permitted in defence of any such claim to set out its calculation of the sum the *Contractor* considers to have been due from the *Subcontractor* (or vice versa) in respect of such payment and the bases on which that sum has been calculated. The adjudicator, arbitrator or court (as the case may be) shall take account of such calculation in determining the amount due to either the *Subcontractor* or the *Contractor*"

## **58 Suspension**

- 58.1 If the *Contractor* fails to pay the *Subcontractor* the sum payable under clause 51.7 or 59.2 (as appropriate) by the Final Date for Payment and the failure continues for 7 days after the *Subcontractor* has given notice to the *Contractor* of his intention to suspend the performance of his obligations under this subcontract and the ground or grounds on which it intends to suspend performance, the *Subcontractor* may suspend performance of any or all of its obligations, provided always that the relevant sum remains outstanding at the end of such notice period. Such suspension is a compensation event.
- 58.2 The *Subcontractor's* right to suspend the performance of any or all of his obligations for non-payment pursuant to clause 58.1 is not exercised without the *Subcontractor* first having left the *subcontract services* and the relevant Affected Properties (or the relevant parts thereof) in a safe, tidy and secure condition so as not to present any hazard or danger to persons or property on or adjacent to the Affected Properties or any impediment which may prejudice the continuation of the works under the Main Contract by others or so as to leave the *subcontract services* (or relevant parts thereof) exposed to damage or deterioration.
- 58.3 The *Subcontractor's* right to suspend performance ceases upon the *Contractor* making payment in full of the relevant amount due to the *Subcontractor*.
- 58.4 The *Subcontractor* indemnifies the *Contractor* and keeps the *Contractor* indemnified against any and all liabilities, losses, damages, costs and/or expenses suffered or incurred by the *Contractor* as a consequence of the *Subcontractor* suspending the performance of his obligations where it is subsequently conceded by the *Subcontractor*, agreed by the Parties, or determined by the tribunal or an adjudicator that the sums claimed as due to the *Subcontractor* are not due or that the *Contractor* has served an effective notice under clause 51.8 prior to the Final Date for Payment, or otherwise as a consequence of the *Subcontractor* failing to comply with clauses 58.2 or 58.3.

## **59 Final Payment**

- 59.1 Not later than 20 days after the end of the Subcontract Service Period the *Subcontractor* sends to the *Contractor* all information and documentation in the possession and/or control of the *Subcontractor* which is reasonably required by the *Contractor* to assess the final amount due under the subcontract.
- 59.2 The final payment to the *Subcontractor* is due six weeks after the later of:
- (1) the end of the Subcontract Service Period; and
  - (2) the final date by which the *Subcontractor* is required to send the documents referred to in clause 25C.



The *Contractor* issues a Final Certificate to the *Subcontractor* within five days of that due date specifying the final amount due under the subcontract, the amount of the payment made or proposed to be made to the *Subcontractor* and how the amounts are calculated. The Final Date for Payment shall be the *specified number of days* after the due date (or, if no *specified number of days* is stated in the Subcontract Data Part 1, [28 days] after the due date).

- 59.2A
- (1) Where the *Subcontractor* disagrees with any element of the Final Certificate or any notice of the *Contractor's* intention to pay less than the notified sum issued pursuant to clause 51.2, the *Subcontractor* forthwith and in any event within 14 days of issue of the same, shall notify the *Contractor* of the same.
  - (2) Within 14 days of the *Contractor's* receipt of such notice, the Parties may (at the *Contractor's* discretion) meet and discuss the *Subcontractor's* comments in good faith and endeavour to agree a resolution for the same.
  - (3) Where at the later of:
    - the expiry of the 14 day period referred to in clause 59.2A(2); and
    - seven days following the Parties' meeting (if such a meeting takes place) referred to in clause 59.2A(2)the *Subcontractor's* comments have not been resolved, and the *Subcontractor* has not commenced proceedings in relation to the same, clause 59.3 shall apply.

59.3 Except as provided in clauses 59.2A, 59.4, 59.5 and 59.6 (and save in respect of fraud) the Final Certificate (subject to any modifications of the same agreed pursuant to clause 59.2A) has effect in proceedings of any form under or arising out of or in connection with this subcontract as:

- (1) conclusive evidence that any necessary effect is given to all the terms of this subcontract which require that an amount is to be taken into account in the assessment of the final amount due under the subcontract, save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Certificate has effect as conclusive evidence as to all other computations; and
- (2) conclusive evidence that all and only such changes to the Prices, the timing of the *subcontract service* or Task Completion Dates, as are due, are given.

59.4 If proceedings of any form have been commenced by either party (or by the *Client*, to which the *Subcontractor* is a party) before the Final Certificate is issued, the Final Certificate is conclusive evidence as provided in clause 59.3 upon and from the earlier of either:

- (1) the conclusion of such proceedings, in which case the Final Certificate is subject to the terms of any decision, award or judgment in or settlement of such proceedings; or
- (2) the expiry of any period of 12 months from or after the Final Certificate is given during which neither party takes any further steps in such proceedings, in which case the Final Certificate

is subject to any terms agreed in settlement of any of the matters previously in issue in such proceedings.

- 59.5 If proceedings of any form are commenced by either party (or by the *Client*, to which the *Subcontractor* is a party) within 10 days after the date of receipt by the *Subcontractor* of the Final Certificate, the Final Certificate is conclusive evidence as provided in clause 59.3 save only in respect of the matters to which those proceedings relate.
- 59.6 In the case of a dispute or difference on which an adjudicator gives his decision on a date which is after the date of the Final Certificate, if either party wishes to have that dispute or difference determined by other proceedings available to him, that party may initiate such proceedings within 28 days of the date on which the adjudicator gives his decision."

#### **Compensation events<sup>18</sup>**

- 60.1(1) In the first line, after "an instruction changing the Subcontract Scope" insert "including an instruction to omit any part(s) of the Subcontract Scope (regardless of whether the *Contractor* intends to perform such omitted part(s) of the Subcontract Scope itself, award it to another subcontractor, or otherwise)"

Delete the second bullet point and insert the following:

- " • a change to the Subcontract Scope to resolve an inadequacy in the plan in the Subcontract Scope."

- 60.1(5) At the end of this clause, insert "save where such instruction is issued in exercise of the *Contractor's* right under clause 25E.4"
- 60.1(10) At the end of this clause insert "unless the test or inspection shows that the relevant part of the *subcontract service* was not performed in accordance with the subcontract"
- 60.1(15) Delete "breach of subcontract" and replace with "act of prevention".
- 60.1(17) Delete clause 60.1(17) and replace with "Not used".

#### **Notifying compensation events**

- 61.2 In the first bullet point, after the word "*Subcontractor*" add "or a Subsubcontractor".
- 61.3 Delete from "unless" to the end of the clause.
- 61.4 Add the following at the end of the third bullet point:  
  
"and/or any of the *Subcontractor's* Persons (save to the extent that notwithstanding any such fault, there has been a corresponding change to the Prices, the timing of the *service period* and/or Task Completion Dates under the Main Contract)"

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<sup>18</sup> **[Note:** The list of compensation events has been amended to reflect what we would typically expect a Main Contract to provide, but we would expect this list to be checked on a project-by-project basis to ensure it reflects (to the extent possible) the actual risk position under the Main Contract. Care should be taken to ensure that compensation event relief is passed through to the *Subcontractor* or, if it is not, any gaps in risk are fully understood. Failure to amend the compensation events provisions in this manner may either (i) entitle the *Subcontractor* to claim against Amey where no claim exists upstream; or (ii) deny the *Subcontractor* an ability to claim where Amey enjoy such a right under the Main Contract.]

In the second last line, delete the word "acceptance". Insert the word "non-acceptance" and delete "and an instruction to submit quotations".

### **Quotations for compensation events**

62.3 Replace "four weeks" with "six weeks"<sup>19</sup>.

62.6 In the second last line, delete the word "acceptance". Insert the word "non-acceptance."

### **Assessing compensation events**

63.6 At the end of the clause, add the following:

"Where a delay caused by a compensation event runs concurrently with a delay which is not caused by a compensation event, the period for which the delays are concurrent is not taken into account in assessing any delay to Task Completion due to the compensation event and the *Subcontractor* is not entitled to any extension of time or any change to the Prices as a result of such concurrent delay. A concurrent delay is any delay or part of any delay caused by a compensation event which runs concurrently with any delay or part of any delay caused either by a matter other than a compensation event, or by a compensation event, regardless of which delay arose first and regardless of which delay is considered to be the more dominant."

63.7 In line one, delete "*Contractor* and the". In the second line delete "are their" and insert "is the *Subcontractor's*".

### **The *Contractor's* assessments**

64.4 Delete the last sentence.

### **Proposed Instructions**

65.1 At the end, add the following:

"unless otherwise instructed by the *Contractor*."

### **Implementing compensation events**

66.1 Delete the third bullet point.

### **Sole remedy**

67 Insert a new clause 67 entitled "Sole remedy" as follows:

"The rights of the *Subcontractor* to changes to the Prices and the Task Completion Dates are the *Subcontractor's* exclusive rights and remedies in respect of a compensation event that arises under this subcontract and/or for any and all breaches thereof. The *Subcontractor* has no additional rights or remedies (including, but not limited to, damages for breach of contract) whether arising by common law, in equity, by statute or otherwise, in respect of any such compensation event."

### **The *Contractor's* title to Plant and Materials**

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<sup>19</sup> **Note:** Ensure that reply period in this clause allows suitable "head-room" against equivalent periods in Main Contract.]

70.1 At the beginning of the clause delete "Whatever" and insert "Subject to clause 70.2, whatever".

70.2 After clause 70.1, insert new clause 70.2 as follows:

"Notwithstanding clauses 70 and 71:

- where in accordance with clause 51 of the Main Contract the value of any Equipment, Plant and Materials has been included in any payment under which the amount properly due to the *Contractor* has been paid to him by the *Client*, that Equipment, Plant and Materials shall become the property of the *Client*; and
- if the *Contractor* pays the *Subcontractor* for any Equipment, Plant and Materials before their value is included in any payment to the *Contractor* under the Main Contract, such Equipment, Plant and Materials shall upon such payment by the *Contractor* be and become the property of the *Contractor*."

#### **Client's and *Contractor's* liabilities**

80.1 At the end of the second bullet point, insert the following:

"(unless a fault in any design which the *Subcontractor* agrees in this subcontract to take responsibility for)"

In the third bullet point, in the last line delete "and accepted".

#### **Recovery of costs**

82.4 Add a new clause 82.4 as follows:

"Each party is liable to the other in respect of the other party's reasonable and proper costs arising from claims, proceedings, compensation and costs due to an event which is his risk. Such other party takes all reasonable steps to mitigate such costs and shall give early warning of the likelihood of such costs arising."

#### **Insurance policies**

84.1 Delete clause 84.1 and replace with the following:

"At the same time as executing this subcontract, the *Subcontractor* provides to the *Contractor* for acceptance certificates of verification of insurance cover confirming that any/all insurance policies which are, or will be, required to be taken out and/or maintained by the *Subcontractor* under this subcontract are in place, both upon the required terms and also at the required levels, and copies of such insurance policies. The *Subcontractor* also provides such certificates and copies of insurance policies to the *Contractor* for acceptance forthwith upon each renewal of any/all insurances which are required to be put in place and/or maintained by the *Subcontractor* under this subcontract until the end of the Subcontract Service Period. All the certificates provided under this clause 84.1 are signed by the *Subcontractor's* insurer or insurance broker. The *Contractor* accepts the certificate if the insurance complies with the subcontract and if the insurer's commercial position is strong enough to carry the insured liabilities."

84.3 Delete clause 84.3 and replace with the following:

"Each Party complies with the terms and conditions of the insurance policies to be complied with on its part, and neither Party by any act or neglect causes any insurance policy to be void or voidable or entitles the insurer to refuse any claim

(in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity."

84.4 Add a new clause 84.4 as follows:

"The *Subcontractor* and the *Contractor* notify the other in accordance with clause 13 of any claims which they receive in respect of any injury, loss or damage referred to in clauses 83 and 84. Notification by the *Subcontractor* is given to the *Contractor* immediately."

84.5 Add a new clause 84.5 as follows:

"It is a requirement of the *Subcontractor's* obligations to procure insurances under this subcontract that any insurer's obligation to make payment under any such insurance is not subject to any requirement that the *Subcontractor* shall have made any payments (or permitted any deduction or set-offs or conferred any other benefit) in respect of the relevant claim."

84.6 Add a new clause 84.6 as follows:

"In the event that the *Subcontractor's* Professional Indemnity insurance policy (should he be required to carry one) excludes any liability that the *Subcontractor* may incur in respect of any criminal prosecution arising from any act or omission of the *Subcontractor* (including but not limited to prosecution under the CDM Regulations) the *Subcontractor* shall, not later than the date of execution of this subcontract, provide evidence (in the form of written confirmation from its Professional Indemnity insurers, or such other evidence as the *Contractor* may reasonably require) that, should any civil liability arise out of the same set of circumstances which gave rise to that criminal prosecution, the *Subcontractor's* Professional Indemnity insurance would cover any such liability had no criminal liability/prosecution arisen."

84.7 Add a new clause 84.7 as follows:

"In relation to all claims made under insurances obtained by the *Contractor* (as set out in the Subcontract Data) the following provisions apply:

- (1) Unless the *Contractor* otherwise decides, the *Subcontractor* authorises the *Contractor* to submit all claims and the *Contractor* submits and administers all claims.
- (2) Without prejudice to any other right, remedy or power of the *Contractor*, the *Subcontractor* must provide such information, documents and records in connection with such claims as the *Contractor* requires forthwith on demand, regardless of whether the *Contractor* is submitting or administering the claim.
- (3) Without prejudice to any other right, remedy or power of the *Contractor*, the *Subcontractor* authorises insurers to pay monies under the insurances to the *Contractor*.
- (4) The *Contractor*, after receipt of monies paid under the insurances, allocates and pays to each party insured that portion of the monies received for the purpose of rectifying the loss that each party insured has suffered. The deductible is borne by the negligent party."

**If the *Subcontractor* does not insure**

85.1 At the end of the clause insert "or deducted from amounts due to be paid to the *Subcontractor* by the *Contractor*".

## Insurance by the Client or the *Contractor*

86.1 Delete clause 86.1 and replace with the following:

"Upon reasonable request of the *Subcontractor* the *Contractor* provides evidence that the insurances to be provided by the *Contractor* under this subcontract are in place and comply with the subcontract."

86.3 Delete clause 86.3.

86.4 Insert new clause 86.4 as follows:

"This clause applies where any claim is made under any Joint Names Policy (whether taken out by the *Contractor* or the *Client*), where the *Subcontractor* is either recognised as an insured under the Joint Names Policy or the insurers waive any rights of subrogation they may have against the *Subcontractor*. To the extent such claim relates to any loss or damage caused (whether directly or indirectly) by any negligence, breach of statutory duty, omission or default of the *Subcontractor* or any person for whom the *Subcontractor* is responsible, the *Subcontractor* is liable for that proportion of any excess (as set out in Part 1) paid by the *Contractor* to the insurer as required by such insurance policy or any other liability incurred by the *Contractor*, whichever is the greater and an appropriate deduction is either taken into account in the calculation of the sums due for payment under this subcontract or is recoverable by the *Contractor* from the *Subcontractor* as a debt. For the avoidance of doubt, the *Subcontractor's* liability hereunder continues after the earlier of: (i) the end of the Service Period under the Main Contract; and (ii) the date of termination of the employment of the *Contractor* (whether or not the validity of that termination is contested) under the Main Contract, and shall apply where the insured bears the first part of any claim for loss or damage."

## Termination

90.2 Delete the Termination Table at clause 90.2 and substitute:

Terminating Party	Reason	Procedure	Amount due
The <i>CONTRACTOR</i>	R1-R15 (including R4A, R4B, R5A, R9A, R9B, R9C, R10A, R10B and R10C), R18, R21, R23, R23A, R23B OR R24	P1, P2, P3 and P5	A1 and A3
	R17 or R20	P1, P3 and P5	A1 and A2
	R22	P1, P4 and P5	A1, A2 and (subject to clause 93.9) A3
	R25	P1, P4 and P5	A1 and A2
The <i>SUBCONTRACTOR</i> OR	R1-R10 (including R4A, R4B, R9A, R9B, R9C, R10A, R10B and R10C), R16 or R19	P1 and P4	A1 and A2

## Reasons for Termination

91.1 Delete clause 91.1 and substitute:

"Subject to clause 91.1A below, either Party may terminate if the other Party has done or suffered one of the following or its equivalent in any jurisdiction:

If the other Party is an individual and has:

- presented his petition for bankruptcy (R1),
- had a bankruptcy order made against him (R2),
- had a receiver appointed over his assets (R3),
- entered into any arrangement or scheme for the benefit of his creditors (including an individual voluntary arrangement under the Insolvency Act 1986) or has applied for any order preventing or restricting the enforcement of his debts (R4),
- a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his affairs (R4A), or
- died (R4B).

If the other Party is a company or partnership and has:

- had a winding-up order made against it (R5),
- a monitor appointed or any document is filed at court to obtain or apply for a moratorium or order is made for a moratorium to come into force (R5A),
- had a provisional liquidator appointed to it (R6),
- passed a resolution for winding-up (other than in order to solvently amalgamate or reconstruct) (R7),
- had an administration order made against it or an administrator is appointed under any provision of the Insolvency Act 1986 (in the case of a partnership as applied by an order under section 420 of that Act (R8),
- had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9),
- made any arrangement, compromise or composition with a creditor including a voluntary arrangement under any provision of the Insolvency Act 1986 (in the case of a partnership as applied by an order under section 420 of that Act) (R9A),
- been or is in the process of being dissolved by order of the court or otherwise (R9B), or
- made or is in the process of making a scheme of arrangement under Part 26 of the Companies Act 2006 (R9C).

And in any event:

- if either Party becomes insolvent or stops or suspends payment of any of his or its debts or is unable to, or admits its inability to pay his or its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 (R10),
- if any distress, execution, expropriation, sequestration or other analogous legal process is levied on any of his or its assets (R10A);
- if he or it is subject to any steps to enforce any charge or security interest against him or it (R10B); or
- if he has decided to cease trading or intends to cease trading in the future (R10C)"

91.1A Insert new clause 91.1A as follows:

"The *Subcontractor's* right to terminate for any of reasons R5A to R8, R9 where an administrative receiver is appointed, R9A, R9B, R9C or R10 where a voluntary arrangement approved under Part 1 of the Insolvency Act 1986 takes effect in relation to the *Contractor*, or after a court order is made under section 901C(1) of the Companies Act 2006 in relation to the *Contractor* (a "**relevant insolvency procedure**") will not arise unless and to the extent that:

- in a case where the *Contractor* has entered administration, an administrative receiver of the company has been appointed (otherwise than in succession to another administrative receiver), gone into liquidation and/or a provisional liquidator of the *Contractor* is appointed (otherwise than in succession to another provisional liquidator), the office-holder consents to the termination,
- in any other case, the *Contractor* consents to the termination,
- the court is satisfied that the continuation would cause the *Subcontractor* hardship and grants permission for the termination or
- the termination is otherwise permitted pursuant to Section 233B of the Insolvency Act 1986 (as amended and in force from time to time).

91.2 and 91.3 Amend clauses 91.2 and 91.3 by deleting "within three weeks" and replacing with "within ten days"<sup>20</sup>.

91.2 Delete the first bullet point and replace with:

"Failed to comply with its obligations under this subcontract (R11)"

Delete the final bullet point at the end of clause 91.2 and replace with:

"Appointed a subsubcontractor before the *Contractor* has accepted the subsubcontractor in accordance with clause 24.2 (in which case the *Contractor*

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<sup>20</sup> [Note: This should reflect the cure period in the Main Contract with appropriate "headroom" between Main Contract and subcontract periods. Amend if necessary.]



may terminate the whole of this subcontract or the relevant part in respect of which the subsubcontractor was appointed) (R13)."

91.2A Insert a new clause 91.2A as follows:

"The *Contractor* may terminate if the *Subcontractor's* performance bond (provided pursuant to clause X13) ceases to be in full force and effect unless the *Subcontractor* has within 7 days provided to the *Contractor* either (i) a performance bond in the same form and amount (net of any claims previously made on the performance bond) as that originally provided and from a financial institution acceptable to the *Contractor*, acting reasonably or (ii) cash collateral in an amount equal to the amount of the performance bond (net of any claims previously made on the performance bond), which cash collateral shall become due for release only when a replacement performance bond compliant with limb (i) above is provided or when the performance bond it replaces would have expired, subject to the right to withhold amounts equal to the value of any pending claim by the *Contractor*. This event is treated as an R11 event."

91.3 In clause 91.3, add "or fails to adhere to the *Client's* health and safety requirements and/or the *Contractor's* requirements (health and safety, environmental, or otherwise) as set out in the Subcontract Scope or otherwise referred to in this subcontract", at the end of the second bullet point, but before "(R15)".

91.3A Insert new clause 91.3A as follows:

"Alternatively, if the *Subcontractor* continues a default for 5 days from receipt of the notice under clauses 91.2. 91.2A or 91.3 then the *Contractor* may on, or within 10 days from the expiry of that 5 days by a further notice to the *Subcontractor* instruct the omission of any part or parts of the *subcontract service* and engage a replacement subcontractor, or subcontractors, to carry out such works, and all costs, losses and expenses incurred in connection with such engagement may be deducted from any monies due to the *Subcontractor* under this subcontract or shall be recoverable from the *Subcontractor* as a debt (provided always that the *Subcontractor* shall not be liable to the *Contractor* for failure to complete any work he is so instructed to omit pursuant to this clause and the *Contractor* shall not be obliged to pay the *Subcontractor* for any such work omitted, nor shall the *Subcontractor* be entitled to any compensation, loss of profit or any other payment in respect of such omitted work)."

91.7 Delete clause 91.7 in its entirety and replace it with the following new clause:

"Notwithstanding any other provision of this subcontract if the *Contractor* becomes aware of what it determines in good faith to be:

1. a breach of the representations and warranties provided under clause 18,

2. the *Subcontractor* or any of its officers, employees, directors or agents employed by or acting on behalf of the *Subcontractor* having committed an offence under the Bribery Act 2010 or where the Client is a Local Authority shall have committed an offence under sub-section (2) of Section 117 of the Local Government Act 1972 or any applicable legislation or at common law in respect of fraudulent acts, or

3. the *Subcontractor* or any of its officers, employees, directors or agents employed by or acting on behalf of the *Subcontractor* having committed any breach of clause 19G,

the *Contractor* is entitled to terminate the employment of the *Subcontractor* under this subcontract, and any other agreement between the parties, with immediate

effect, unless if such breach or offence referred to in 91.8.1 and 91.8.2 above respectively is committed by a Subsubcontractor or supplier of the *Subcontractor* and the *Subcontractor*,

- was not aware or should not have been aware of the breach or offence, or
- informed the *Contractor* of the breach or offence and took action to stop it as soon as the *Subcontractor* became aware of it. (R21) "

91.8 Delete clause 91.8 in its entirety and replace it with the following:

"91.8 The employment of the *Subcontractor* terminates automatically from the same date that:

- the Main Contract between the *Contractor* and the Client is terminated or
- the employment of the *Contractor* under the Main Contract is terminated for whatsoever reason (R22)."

91.9 Insert a new clause 91.9 as follows: "The *Contractor* may terminate the Subcontract with immediate effect by giving written notice to the *Subcontractor*, if:

- the *Subcontractor* assigns or charges (or purports to assign or charge) the benefit of this subcontract or any right arising under it other than in accordance with clause 28 (R23);
- the *Subcontractor* has undergone a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the *main contract* and/or the subcontract except with the prior written approval of the *Contractor*, whose approval shall not be unreasonably withheld (R23A);
- the *Subcontractor* or the *Subcontractor's* ultimate holding company ceases to meet the *required net asset threshold*, and the *Subcontractor* fails within 10 days of receiving a notice from the *Contractor* demanding such additional performance security as the *Contractor* may require at its absolute discretion in light of the reduction in such party's net asset value, to provide such additional performance security in a form acceptable to the *Contractor* (R23B)."

91.10 Insert a new clause 91.10 as follows:

The *Contractor* may terminate the Subcontract with immediate effect by giving written notice to the *Subcontractor*, if the *Subcontractor* or its supply chain commits a breach of the Anti-Slavery Policy (R24)."

91.11 Insert a new clause 91.11 as follows:

"The *Subcontractor's* termination rights under clauses 91.4, 91.5 and 91.6 may not be exercised while the *Contractor* is and remains subject to a relevant insolvency procedure unless such exercise is expressly permitted and/or is not prohibited by the provisions of Section 233B of the Insolvency Act 1986 (as amended and in force from time to time)."

91.12 Insert a new clause 91.12 as follows:

"The *Contractor* may terminate the whole of the *subcontract* or any part of the *subcontract* or *subcontract services* at any time in its absolute discretion (R25)."

## Procedures on termination

92.2 Add the following at the end of clause 92.2:

"P5 The *Subcontractor* properly clears up and leaves the *Service Area* and all areas made available to him for the purpose of executing the *subcontract service* clean, tidy and in a state ready for their intended use all to the satisfaction of the *Contractor*. If the *Subcontractor* fails to carry out this requirement the *Contractor* may without notice undertake the work on behalf of the *Subcontractor* and charge the cost to the *Subcontractor* (P5)."

## Payment on termination<sup>21</sup>

93 Add the following at the end of clause 93:

"93.3 No amount becomes due or payable on or following the termination of the *Subcontractor's* obligation to Provide the *Subcontract Service*:

- other than in accordance with clauses 90-93 and
- if the Party terminating is the *Contractor*, until the later of
- expiry of the Service Period under the Main Contract and
- the final payment by the *Contractor* under all other subcontracts relating to the service in the Main Contract.

93.4 Other than as expressly set out in clause 93.2 (as applicable), the *Subcontractor* is not entitled to any payment in respect of costs, damage, expense or loss incurred by it as a result of termination and, notwithstanding any other provision of this Subcontract, the *Subcontractor* agrees that it shall not be entitled to any recovery in respect of indirect or consequential loss or damage arising from any termination of this Subcontract (including, without limitation, the express exclusion of any recovery for loss of any contract, loss of opportunity, loss of profit or loss of revenue).

93.5 On termination under clause 91.8 (R22) if the reason for termination of the Main Contract or of the *Contractor's* employment under the Main Contract is that the *Subcontractor* has failed to comply with his obligations under this subcontract, the amount due on termination of the subcontract includes A3. Otherwise, the amount due on termination under clause 91.8 (R22) includes A1 and A2 only.

93.6 Notwithstanding termination of this subcontract, no payment is due or made to the *Subcontractor* in respect of any part of any payment for which the *Contractor* has not received or will not receive payment due to the *Client* becoming insolvent. The term "insolvent" has the meaning ascribed to it by Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or, if the subcontract is governed by Northern Irish law, article 12(2) to (5) of the Construction Contracts (Northern

<sup>21</sup> [Note: As ever, care should be taken to ensure that the subcontract is amended to reflect any Main Contract amendments which could see Amey paid less on termination than they would be required to pay to the *Subcontractor* under these conditions.]

Ireland) Order 1997 as amended by the Construction Contracts (Amendment) Act (Northern Ireland) 2011."

### Consequences following insolvency

- 94 Insert a new clause 94 entitled "Consequences following insolvency" as follows:
- "94.1 The *Subcontractor* shall immediately inform the *Contractor* in writing if he has decided to cease trading or intends to cease trading in future.
- 94.2 Notwithstanding any other provision of this subcontract, in the event that the *Subcontractor's* obligation to Provide the *Subcontract Service* is terminated under the provisions of clause 91.1 the provisions of this subcontract which require any further payment or any release of retention shall cease to apply until the *Subcontractor* ceases to have a liability under or arising out of this subcontract for Defects (whether patent or latent) in the *subcontract service*."

### Project Specific Provisions

- 100 Insert a new clause 100 entitled "Project Specific Provisions" as follows:
- 100.1 In the event of any discrepancy, inconsistency, conflict or divergence arising between the provisions of this clause 100 and any terms of this subcontract, the *Subcontractor* shall promptly notify the *Contractor*, and the *Contractor* shall issue an instruction as to which provisions shall take priority. Unless and until such an instruction is issued by the *Contractor*, the *Subcontractor* shall be required to comply with whichever provision is more onerous. Any instruction issued by the *Contractor* pursuant to this clause 100 shall not be treated as a compensation event, and the *Subcontractor* shall not be entitled to any extension of time or additional to the Prices in respect of such instruction or any consequences arising from its compliance with such instruction.
- 100.2 [ ]
- 100.3 [ ]
- 100.4 [ ]
- 100.5 [etc.]

**[Guidance:** Clause 100 has been included as a placeholder to allow additional clauses / obligations contained in the Main Contract to be easily incorporated into the Subcontract. Please note:

- Before including any Main Contract provisions here, Amey should first check that they do not conflict with any of the existing terms of the Subcontract. If they do, and it is Amey's intention that the Main Contract provision takes priority, the existing terms will need to be amended.
- Although we have included Clause 100.1 which seeks to deal with any conflict or discrepancy between Clause 100 and the other terms of the Subcontract, in a manner that gives Amey as much control / flexibility as possible, we do not recommend relying on this provision. Order of precedent clauses such as this have a very mixed record in terms of how they are interpreted / enforced by courts or adjudicators, and Amey should therefore carefully review any Main Contract clauses that are set out here, to avoid any conflict arising.
- Amey will also need to ensure that any Main Contract clauses included here are amended to align with the terminology and defined terms used in the Subcontract.

- Examples of some of the provisions that we envisage will NOT be suitable to include here are as follows (although this is not an exhaustive list):
  - Payment terms / payment procedures
  - Compensation events / entitlements to extensions of time or price adjustments
  - Termination rights (these should instead be included in Clause 90 and added to the termination table)
- Examples of some of the provisions that MAY be suitable to include here (subject to a review for any conflicts, and alignment of terminology) are:
  - Additional indemnities
  - Specific notification requirements (to the extent these are in addition to, and do not conflict with, the existing notification requirements in the Subcontract)
  - Requirements relating to conduct on site, site security, or other similar obligations that the Subcontractor is required to comply with or discharge
  - Compliance with particular policies / procedures / protocols required by the Main Contract, or membership of any industry bodies or schemes
- This approach is not a substitute for a full pass-through analysis, and bespoke amendments to the Subcontract terms to ensure that the Subcontract is back to back with the provisions of the Main Contract. However, where a full pass-through exercise is not considered proportionate due to the value of the Subcontract or other commercial / programme considerations, this mechanism can be used to ensure that any key additional obligations included in the Main Contract (including any terms that the Main Contract requires to be expressly flowed down) are included.]

## MAIN OPTION CLAUSES

### Option C: Target subcontract with price list

AND

### Option E: Cost reimbursable contract

#### Identified and defined terms

11.2(24) In the definition of "Disallowed Cost", delete the word "and" in the seventh main bullet point and replace with a comma. Delete the full stop at the end of the eighth main bullet point and replace with "and". At the end of clause 11.2(24) add a new bullet point as follows:

- "any other matters specified in the Subcontract Data."

## DISPUTE RESOLUTION OPTIONS

### Option W2

#### [Expert determination<sup>22</sup>

In clause W2.1, in line 3, after "it is" insert "(unless either party refers it to expert determination in accordance with clause W2.1A)"

Insert a new clause W2.1A as follows

"W2.1A.1 Any dispute arising out of or in connection with this subcontract [the subject of which is predominantly technical in nature] (a **Dispute**) may be referred by either party to determination by an expert (the **Expert**). The Expert shall be a member of the [Institution of Civil Engineers] appointed by agreement in writing between the parties, but in the event of a failure to agree within 10 business days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the Institution of Civil Engineers (or any other association that the parties reasonably understand to have replaced it).

W2.1A.2 The Expert shall act on the following basis:

- (a) The Expert shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) [The Expert's determination shall (in the absence of manifest error) be final and binding on the parties] **OR** [The Expert's determination shall be binding in the interim until either party commences legal proceedings in respect of the Dispute];
- (c) The Expert shall decide the procedure to be followed in the determination and shall be requested to make its determination (with reasons) within 30 business days of appointment and the parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) The determination process shall be conducted in private and shall be confidential; and

<sup>22</sup> **Optional clause (Expert Determination):** Please delete if Amey does not want the option to refer technical disputes to expert determination. If this clause is selected, a decision needs to be made in Clause W2.1A2(b) whether the Expert's determination will be final and binding – please delete the option which is not selected.

- (d) The Expert shall determine how and by whom the costs of the determination, including the Expert's fees and expenses, are to be paid."

### Cost of the adjudication

W2.5 Add a new clause W2.5 as follows:

Save for in the circumstances provided for in clauses W2.5(1) and W2.5(2) below, the Parties each bear their own legal costs and other expenses incurred in any adjudications.

- (1) Where the referring party is awarded in the aggregate a sum less than 50% of the amount claimed he shall, subject to clause W2.5(3), reimburse to the other party the legal costs and other expenses which that non-referring party reasonably and properly incurred in the adjudication.
- (2) Where one or all of the Parties required to carry out any test or inspection or to open up any part of the *subcontract service* pursuant to clause W2.3(4), the Adjudicator may decide and direct, depending upon the conduct of the Parties, the apparent necessity for the test or experiment or opening up and the results thereof, which party is to bear the costs of such test or experiment or opening up.
- (3) The Adjudicator shall have the power to allocate his fees and expenses as between the Parties."

### SECONDARY OPTION CLAUSES

#### Ultimate Holding Company Guarantee<sup>23</sup>

X4 In line three of clause X4, delete "the Subcontract Scope" and insert "Numbered Document 5 (*Required Form of Ultimate Holding Company Guarantee*) within 7 days of the date of this subcontract and, if this subcontract is governed by the laws of Scotland, it shall be executed in a Self-Proving Form ".

Insert at the end of the clause:

"The *Contractor* has no obligation to make any payment under this subcontract until the *Subcontractor* has complied with this clause X4."

#### Termination by the Contractor

X11 Delete and replace with:

"The *Contractor* may terminate the *Subcontract* at any time for its convenience and for any reason whatsoever (including without limitation to procure works similar to the *subcontract services* from a third party). The *Contractor* shall notify the *Subcontractor* in writing and giving the *Subcontractor* no less than five (5) Business Day's notice of the effective date for the termination. The termination procedures are P1. P4 and P5 and the amounts due on termination are exclusively limited to A1 and A2.

<sup>23</sup> [Note: Consider for higher value subcontracts, or where there is particular concern over the *Subcontractor's* financial covenant, requiring an ongoing credit rating test against the Ultimate Holding Company. This would trigger an obligation to provide an alternative form of security in the event the guarantor's credit rating falls below a defined minimum value]

## Performance Bond<sup>24</sup>

X13 In line three of clause X13, delete "the Subcontract Scope" and insert "Numbered Document 6 (*Required Form of Performance Bond*) within 7 days of the date of this subcontract and, if this subcontract is governed by the laws of Scotland, it shall be executed in a Self-Proving Form".

At the end of the second sentence add "in the view of the *Contractor*".

Add at the end of the clause:

"The *Contractor* has no obligation to make any payment under this subcontract until the *Subcontractor* complies with this clause X13."

## Design

X15.5 Delete and replace with "Not Used"

Option Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

Y3 If this subcontract is governed by the laws of Scotland, delete the title "OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999" and replace with "OPTION Y(UK)3: THE CONTRACT (THIRD PARTY RIGHTS) (SCOTLAND) ACT 2017".

Y3.1 If this subcontract is governed by the laws of England or Northern Ireland, delete and replace as follows:

"A Beneficiary may enforce the terms of the subcontract stated in the Subcontract Data under the Contracts (Rights of Third Parties) Act 1999."

If this subcontract is governed by the laws of Scotland, delete and replace as follows:

"A Beneficiary may enforce the terms of the subcontract stated in the Subcontract Data under the Contract (Third Party Rights) (Scotland) Act 2017."

Y3.3 Delete and replace as follows:

"Where the Main Contract and/or any Subcontract Document provides the granting by the Subcontractor of third party rights, such rights vest in the Beneficiary on the date of receipt by the Subcontractor of a notice to that effect."

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<sup>24</sup> [Note: Consider for higher value subcontracts, or where there is particular concern over the *Subcontractor's* financial covenant, requiring an ongoing credit rating test against the bond provider. This would trigger an obligation to provide a replacement bond, and/or a right to call on the full value of the existing bond, in the event the bond provider's credit rating falls below a defined minimum value]



### SCHEDULE 3 – DATA PROTECTION PARTICULARS

The subject matter and duration of the processing	
The nature and purpose of the processing	
The type of Personal Data being processed	
The categories of data subjects	

**[Guidance:** this table must be completed to explain certain matters relating to the personal data that will be processed under the subcontract. This will be the case even where the only personal data to be handled is contact details for the personnel performing the services.

Guidance is as follows:

- Subject matter – will be related to the purpose of the subcontract.
- Duration – this will usually be the duration of the subcontract, ending on either the expiry of the subcontract or (if a clause has been added to the subcontract dealing with deletion of data, for example because it is required by the *main contract*) deletion of the data.
- Nature and purpose of the processing – set out the reasons for processing, e.g. names of occupants may need to be processed if the subcontract involves carrying out work at residential properties.
- Type of personal data – provide details of the categories of personal data rather than go into specifics, e.g. personal details, contact information, financial information, health information.
- Categories of data subjects – set out the categories of people whose data will be processed, e.g. employees, former employees, local residents, customers, tradesmen.]