

DATED 7th May 2025

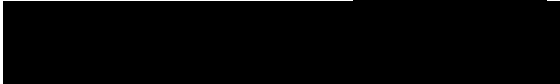
THE SECRETARY OF STATE FOR (1)
ENVIRONMENT, FOOD AND RURAL
AFFAIRS

and

LAING O'ROURKE DELIVERY LIMITED (2)

NEC4 ECC OPTION C (WITH UPDATES
FROM JANUARY 2019 AND OCTOBER
2020)

IN RELATION TO

Construction of PR29 – 


MILLS & REEVE

THIS AGREEMENT is made on

7th May

2025 BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** acting through the Department for Environment Food and Rural Affairs, (DEFRA) and its executive agencies (the "**Client**") (which expression shall include any successors in title and assigns); and
- (2) **LAING O'ROURKE DELIVERY LIMITED** (company number **04309402**) whose registered office Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN ("**Contractor**").

WHEREAS:

The *Client* wishes to enter into an agreement with the *Contractor* on the terms set out in the Contract for the carrying out and completion of the *works*.

NOW IT IS AGREED THAT:

1 Interpretation

- 1.1 Unless the context otherwise requires any term used with initial capital letters or any italicised term has the meaning given to it in the Contract.

2 Works

- 2.1 The *Contractor* Provides the Works and carries out its duties in accordance with the Contract.

3 Price

- 3.1 The *Client* pays the *Contractor* the amount due under and carries out its duties in accordance with the Contract.

4 Conditions

- 4.1 The terms and conditions of the NEC4 Engineering and Construction Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) in its amended form in Schedule 4 have effect as modified by this Agreement and the Schedules to this Agreement (together referred to as the "**Contract**").
- 4.2 Where a reference is made to a clause of the NEC4 Engineering and Construction Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) it shall be read and construed to be a reference to that clause as amended by this Agreement including without limitation Schedule 4 (the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019, October 2020 and January 2023) as amended by the bespoke amendments) and Schedule 5 (the DEFRA Conditions of contract).
- 4.3 If there is any ambiguity or inconsistency in or between the documents comprising the Contract, the priority of the documents is in accordance with the following sequence:
 - 4.3.1 Security Aspects Letter (Schedule 10);
 - 4.3.2 this Agreement (conditions 1 to 7);

- 4.3.3 the completed Contract Data part 1 (Schedule 2) and following the issue of the Notice to Proceed, the Contract Data part 1 for Stage Two (Schedule 3);
- 4.3.4 the Defra Conditions of contract (Schedule 5);
- 4.3.5 the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019, October 2020 and January 2023) as amended by the bespoke amendments which appear within Schedule 4;
- 4.3.6 the Scope (Schedule 6);
- 4.3.7 the People Rates/Price List (Schedule 7);
- 4.3.8 the completed Contract Data part 2 (Schedule 2) and following the issue of the Notice to Proceed, the Contract Data part 2 for Stage Two (Schedule 3); and
- 4.3.9 any other document forming part of the Contract (Schedules 8 and 9).

5 Complete agreement

- 5.1 The Contract is the complete and entire agreement between the *Client* and the *Contractor* in relation to the *works* and supersedes all other oral and/or written communications. The Parties are not bound by, or liable for, any statement, representation, promise, inducement or understanding not contained in the Contract. No amendments or modifications of the Contract are valid unless agreed in accordance with the Contract.
- 5.2 Without prejudice to clause 5.1, nothing in the *Contractor's* tender for the *works* shall operate to exclude or limit the liability of the *Contractor* under the Contract.
- 5.3 Nothing in this clause 5 shall exclude liability in respect of misrepresentations made fraudulently.

6 Counterparts

- 6.1 This Agreement may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by both Parties shall constitute a complete original of this Agreement for all purposes.

7 Execution as a deed

- 7.1 This Agreement is executed as a deed and was delivered when it was dated.

IN WITNESS whereof this Agreement has been executed as a deed by the Parties hereto the day and year first before written.

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:



.....
Authorised Signatory

.....
Print Name /

Executed as a deed by **LAING O'ROURKE DELIVERY LIMITED** acting by either two directors or one director and the company secretary:

.....

.....

Director's name (CAPITAL LETTERS)

.....

Director's signature

.....

Director's/Company secretary's name
(CAPITAL LETTERS)

Director's/Company secretary's signature

Schedule 1

Not used

Schedule 2

Contract Data Stage One

Part one – Data provided by the Client

1 General

- The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 (with amendments January 2019, October 2020 and January 2023) as amended by the bespoke amendments which appear within Schedule 4.
- Main Option: C
- Option for resolving and avoiding disputes: W2
- Secondary Options: X1, X2, X4, X8, X11, X14, X15, X18, X21, X22, Y(UK)2 and Z1.
- The *works* are the National Biosecurity Centre Programme Science Hub Buildings – Main Works Contractor(s) as more particularly set out in the Scope attached at Schedule 6.
- The *Client* is

Name: **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** acting through the Department for Environment Food and Rural Affairs, (DEFRA).

Address for communications: [REDACTED]

Address for electronic communications: [REDACTED] and [REDACTED]

- The *Project Manager* is

Name: [REDACTED]

Address for communications: [REDACTED]

Address for electronic communications: [REDACTED]

- The *Supervisor* is

Name: [REDACTED]

Address for communications: [REDACTED]

Address for electronic communications: [REDACTED]

- The Scope is in the document attached at Schedule 6.
- The Site Information is to be provided after the *starting date* but ahead of the *works* taking place.
- The *boundaries of the site* are as set out in the drawings in Schedule 9.
- The *language of this contract* is English.
- The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales.
- The *period for reply* is 2 weeks unless otherwise specified in the Scope.
- The following matters will be included in the Early Warning Register: Not used.
- Early warning meetings are to be held at intervals no longer than: weekly.

2 The Contractor's main responsibilities

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

The *key dates* and *conditions* to be met are: not applicable.

If Option C is used, the *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* at intervals no longer than monthly.

3 Time

- The *starting date* for Stage One is [REDACTED]
- The *access dates* are as set out in the accepted programme.
- The *Contractor* submits revised programmes at intervals no longer than one month.
- The *completion date* for Stage One is [REDACTED]
- The *Client* is **not willing** to take over the *works* before the Completion Date.
- If no programme is identified in part two of the Contract Data, the period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is one month.

4 Quality management

- The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is four weeks.
- The period between Completion of the whole of the *works* and the *defects date* is 24 months.
- The *defect correction period* is as set out in the Scope.

5 Payment

- The *currency of this contract* is the pound sterling (£).
- The *assessment interval* is monthly.

The *interest rate* is [REDACTED] % per annum (not less than 2) above the base rate in force from time to time of the Bank of England.

- If the period in which payments are made is not three weeks and Y(UK)2 is not used, the period within which payments are made is 30 days.
- If Option C is used, the *Contractor's share percentages* and the *share ranges* are

share range

Contractor's share percentage

less than

from

from

greater than

[REDACTED]

- If Option C is used, the *exchange rates* are those published in: Not applicable, on: Not applicable (date).

6 Compensation events

- The place where weather is to be recorded is: [REDACTED]
- The *weather measurements* to be recorded for each calendar month are
 - the cumulative rainfall (mm)

- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 9.00 hours GMT

The *weather measurements* are supplied by the Met Office.

- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at: [REDACTED] and which are available from the Met Office.
- Where no recorded data are available, assumed values for the ten year weather return *weather data* for each *weather measurement* for each calendar month are: Not applicable.
- If there are additional compensation events, these are additional compensation events: Not applicable.

8 Liabilities and insurance

- These are additional *Client's* liabilities:
(1) Terrorism not covered by Pool Re.
- The minimum amount of cover and periods for which the *Contractor* maintains insurance are:
 - The minimum amount of cover for insurance against loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor Providing the Works for any one occurrence is: [REDACTED]
 - The minimum amount of cover for insurance against death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with the contract for any one occurrence is: the greater of [REDACTED]
- If the *Client* is to provide any Plant and Materials, the insurance against loss of or damage to the *works*, Plant or Materials is to include cover for Plant and Materials provided by the *Client* for an amount of: Not used.
- If the *Client* is to provide any of the insurances stated in the Insurance Table, the *Client* provides these insurances from the Insurance Table
 - (1) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.
 - (2) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.
 - (3) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.
- If additional insurances are to be provided
The *Client* provides these additional insurances
 - (1) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.
 - (2) Insurance against: Not used.
Minimum amount of cover is: Not used.

The deductibles are: Not used.

- (3) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.

The *Contractor* provides these additional insurances

- (1) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.
- (2) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.
- (3) Insurance against: Not used.
Minimum amount of cover is: Not used.
The deductibles are: Not used.

Resolving and
avoiding
disputes

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- The Senior Representatives of the *Client* are:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- The *Adjudicator* is

- [REDACTED]
- [REDACTED]
- [REDACTED]

- The *Adjudicator nominating body* is the [REDACTED]

If Option X1 is
used

X1: Price adjustment for inflation

- [REDACTED]
- [REDACTED]
- [REDACTED]

If Option X2 is
used

X2: Changes in the law

- The *base date* is the [REDACTED]

If Option X8 is used

X8: Undertakings to others

- The *undertakings to Others* are provided to: see amendments to X8.
- The *Subcontractor undertakings to Others* are: see amendments to X8.

If Option X14 is used

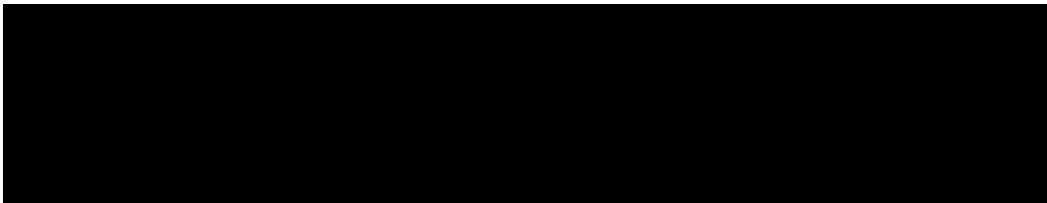
X14: Advanced payment to the Contractor

- The amount of the advanced payment is: see amendments to X14.
- The period after the Contact Date from which the *Contractor* repays the instalments in assessments is: see amendments to X14.
- The instalments are (either an amount or a percentage of the payment otherwise due): see amendments to X14.
- An advanced payment bond may be required.

If Option X15 is used

X15: The Contractor's design

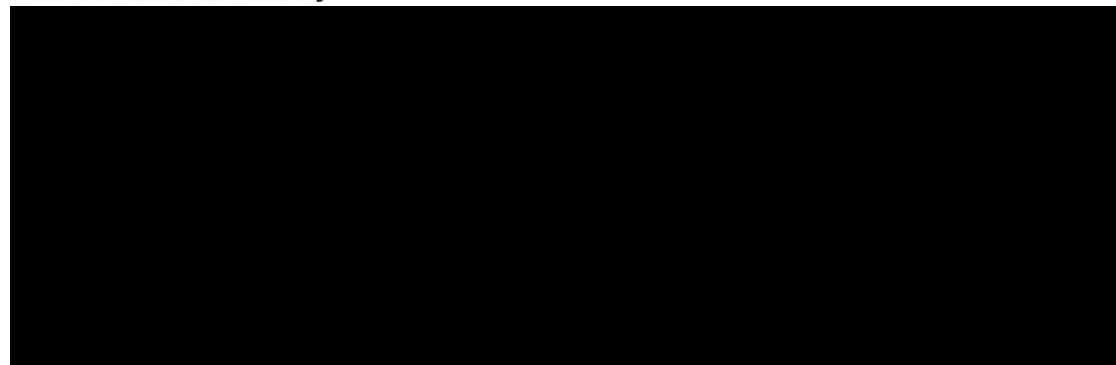
- The *period for retention* following Completion of the whole of the *works* or earlier termination is: 12 years.

- 

- The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is: 12 years.

If Option X18 is used

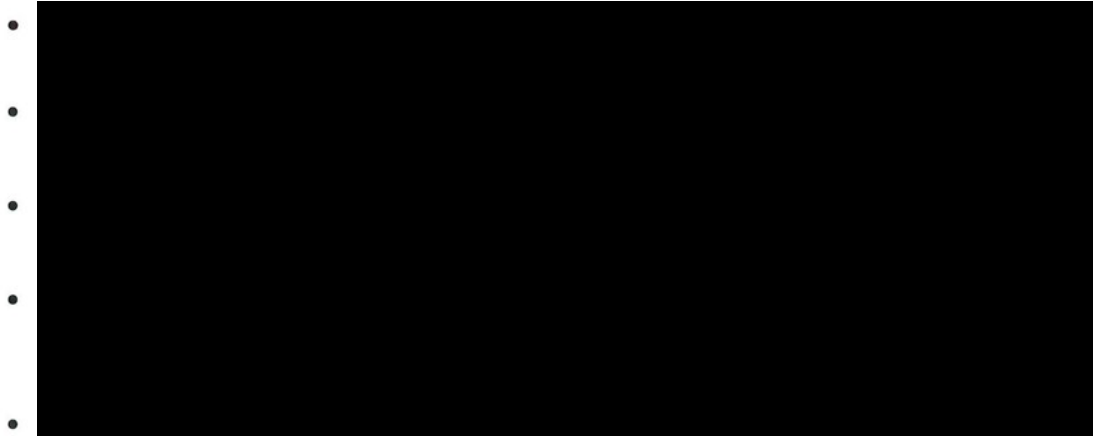
X18: Limitation of liability



- The *end of liability date* is 12 years after the Completion of the whole of the *works*.

If Option X22 is used

X22: Early Contractor involvement



**If Option
Y(UK)2 is used**

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

- If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due, the period for payment is 30 days after the date on which payment becomes due.

**If Option Z is
used**

Z1: additional conditions of contract

- The additional conditions of contract are included at Schedule 5 to the form of agreement and, as stated in that schedule, are incorporated as part of the conditions of contract and in the event of a conflict with any other term, the terms of that schedule take precedence.

Part two – Data provided by the *Contractor*

1 General

- The *Contractor* is

Name: Laing O'Rourke Delivery Limited

[REDACTED]

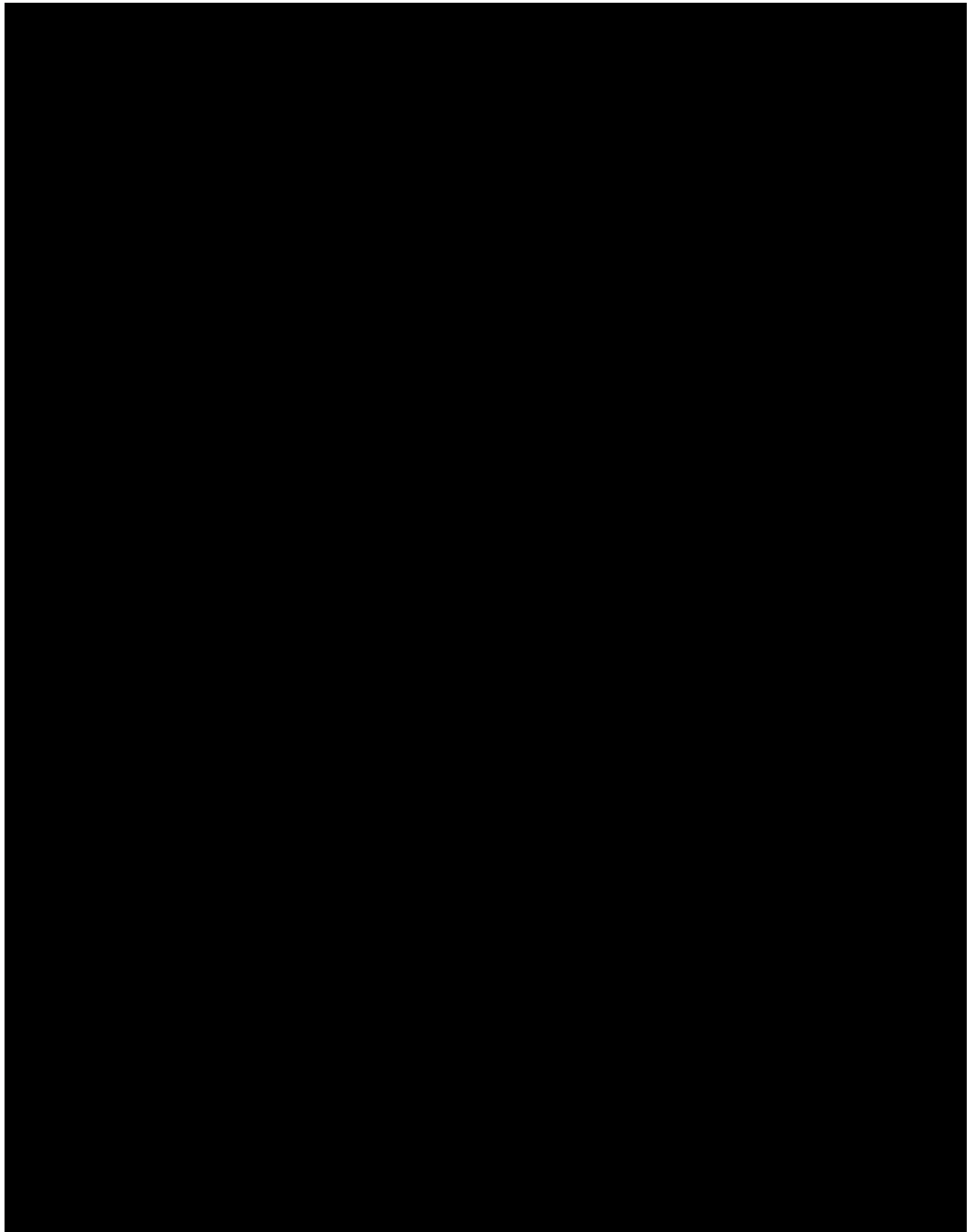
- The *fee percentage* is [REDACTED]
- The *working areas* are the Site and

-
-
-
-
-

[REDACTED]

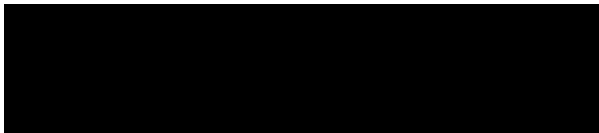
- The key persons are

[REDACTED]



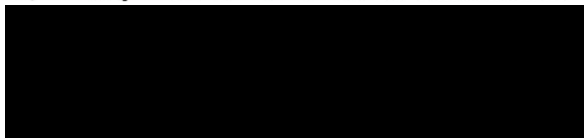
- For Stage One, the Affiliates are:

-
-
-
-



- For Stage One, the Key Subcontractors are:

-
-
-
-



- The following matters will be included in the Early Warning Register:

-



-
-
-
-
-



2. The Contractor's main responsibilities

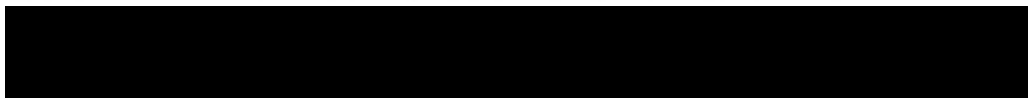
- If the *Contractor* is to provide Scope for its design, the Scope provided by the *Contractor* for its design is attached at: Not applicable.

3. Time

- If a programme is to be identified in the Contract Data, the programme identified in the Contract Data is attached at: Not applicable.
- If the *Contractor* is to decide the *completion date* for the whole of the works, the *completion date* for the whole of the *works* is: Not applicable.

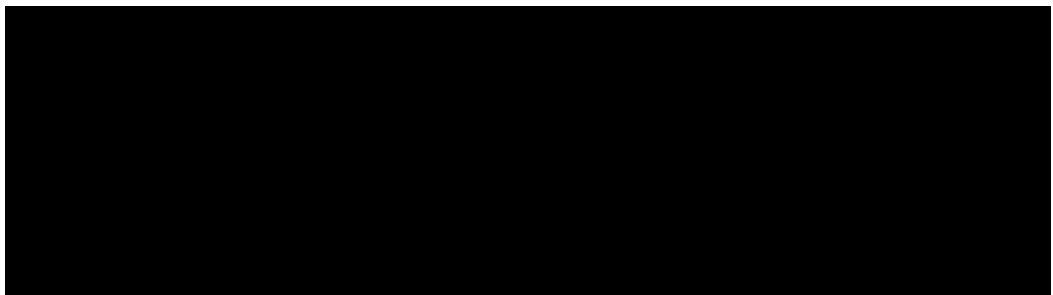
5. Payment

-
-



Resolving and avoiding disputes (W2)

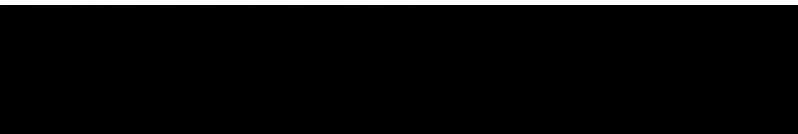
- The *Senior Representatives* of the *Contractor* are



If Option X22 is used

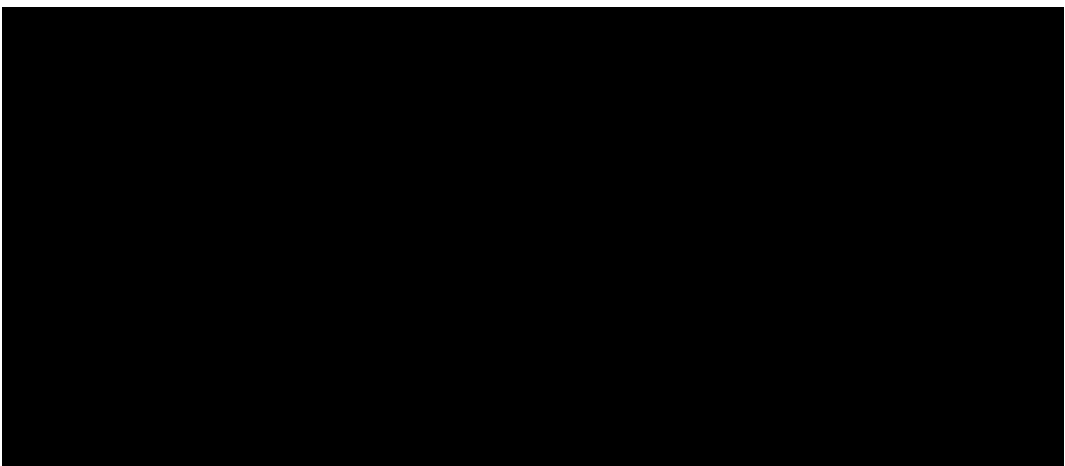
X22: Early Contractor involvement

-
-



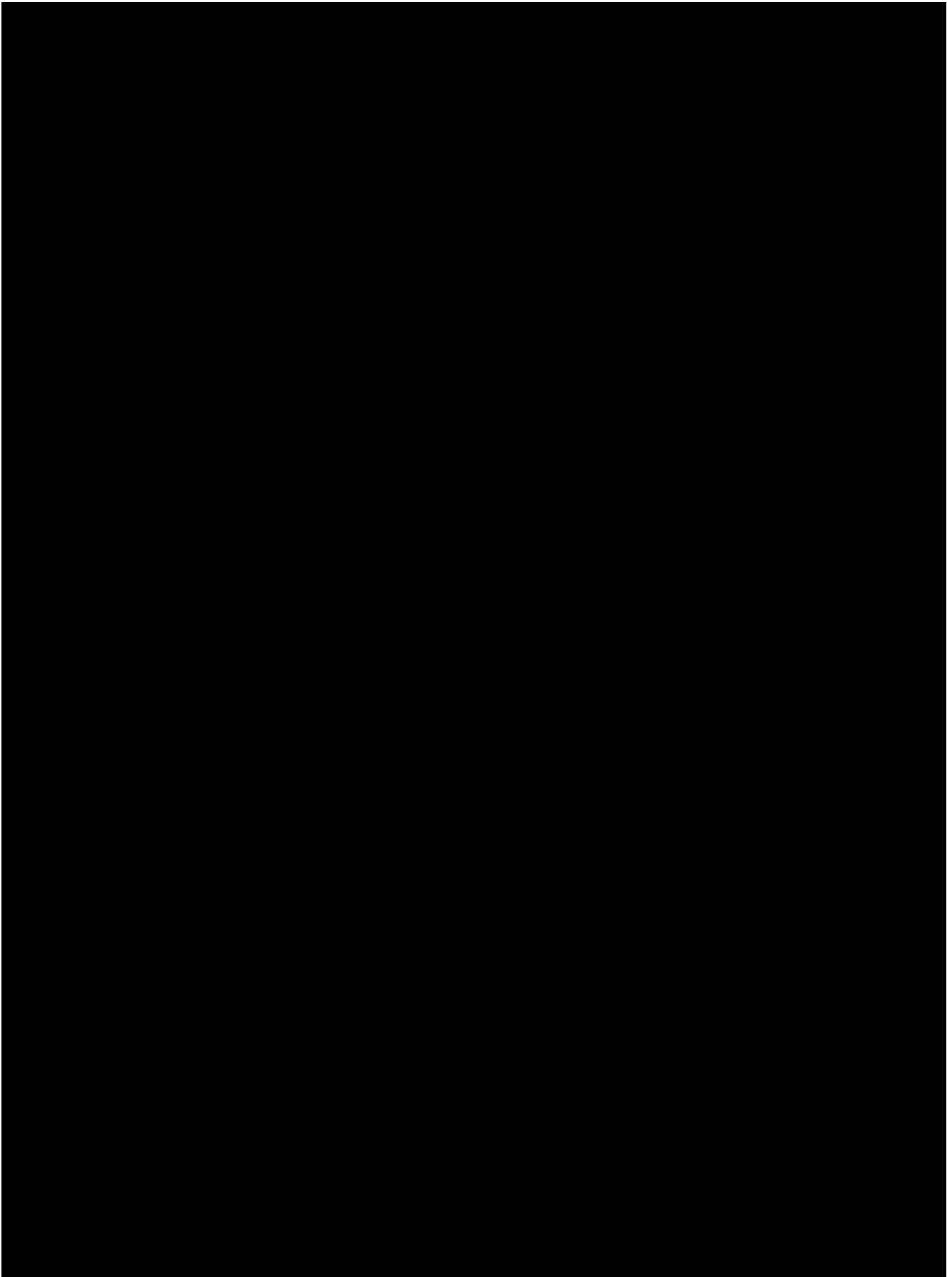
Data for the Schedule of Cost Components

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Schedule 3

Contract Data Stage Two

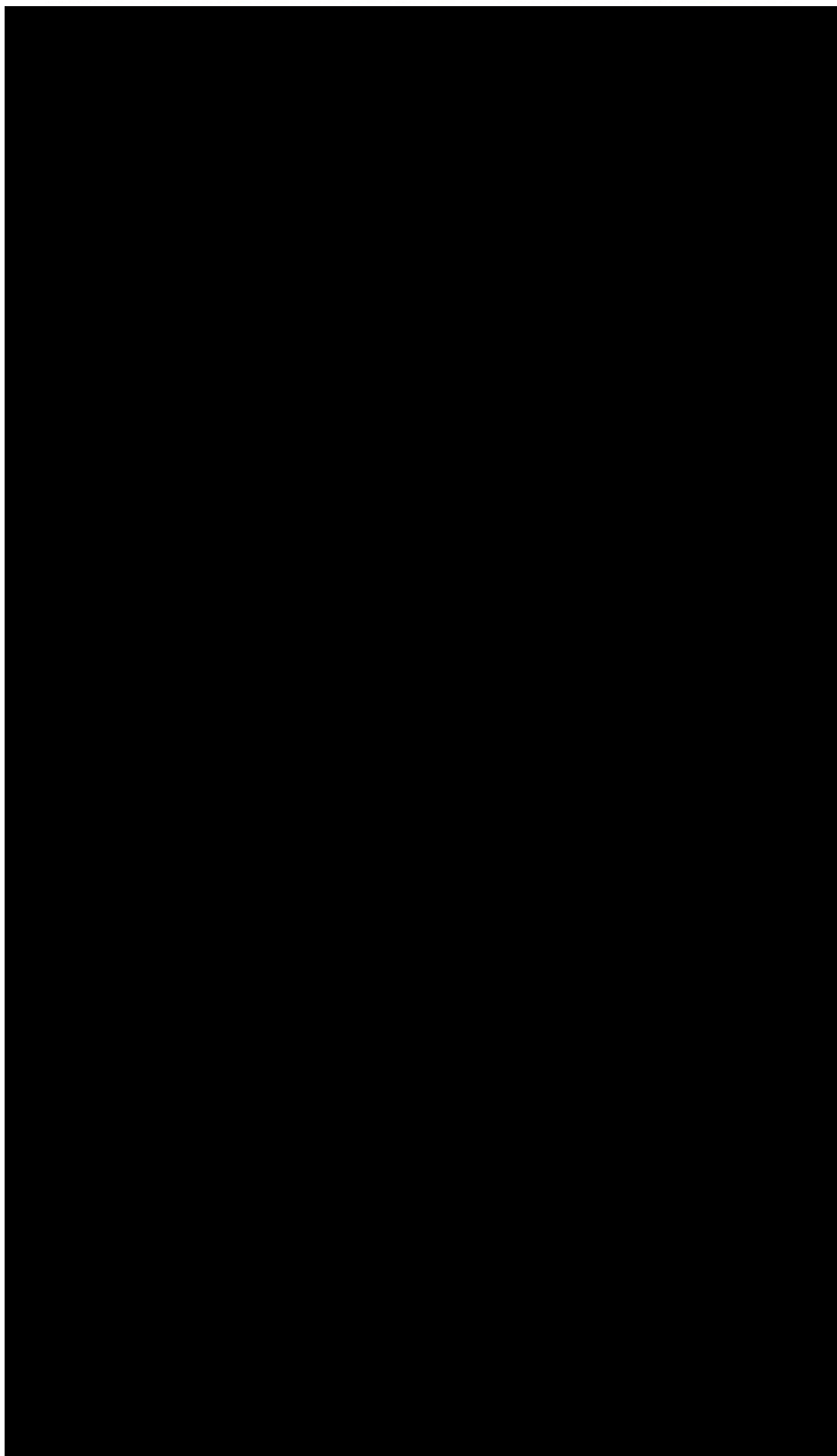


**2 The
Contractor's
main
responsibilities**

3 Time

**4 Quality
management**

5 Payment



**6
Compensation
events**

**8 Liabilities and
insurance**

**Resolving and
avoiding
disputes**

**If Option X1 is
used**

**If Option X2 is
used**

**If Option X5 is
used**

**If Options X5
and X7 are
used together**

**If Option X8 is
used**

**If Options X12
is used**

**If Option X14
is used**

**If Option X15
is used**

If Option X16
is used

If Option X18
is used

If Option X20
is used

If Option
Y(UK)1 is used

If Option
Y(UK)2 is used

If Option Z is
used



Part two – Data provided by the *Contractor*

1 General

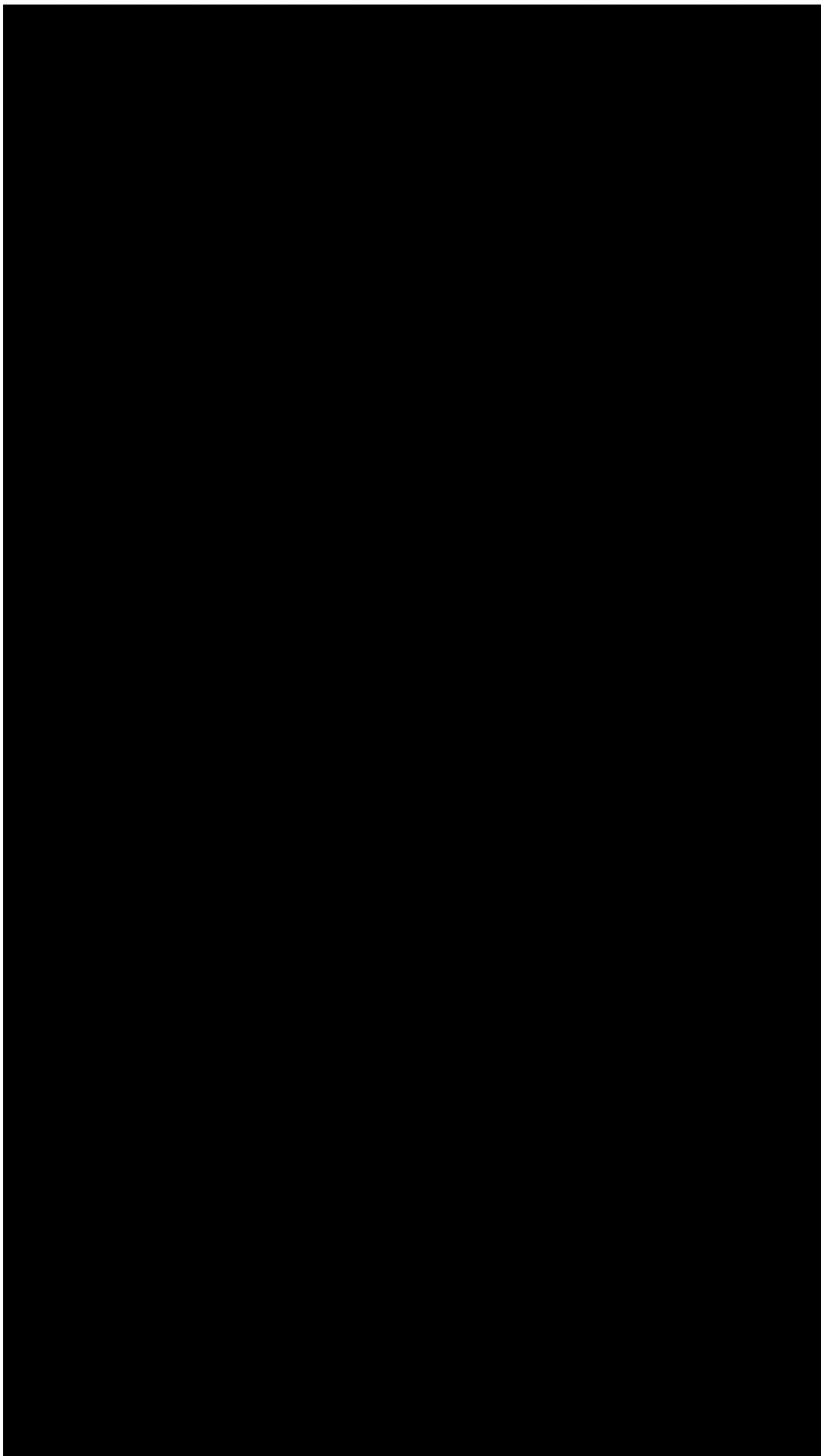
**2. The
Contractor's
main
responsibilities**

3. Time

5. Payment

**Resolving and
avoiding
disputes (W2)**

If Option
Y(UK)1 is used



Schedule 4

NEC4 Engineering and Construction Contract (June 2017 Edition (incorporating amendments January 2019, October 2020 and January 2023))

The NEC4 Engineering and Construction Contract (June 2017 Edition (incorporating amendments January 2019, October 2020 and January 2023)) in its form as amended by the bespoke amendments which appear within this Schedule 4 incorporated herein and is supplemented and/or (as applicable) further amended by the terms of Schedule 2, Schedule 3 and Schedule 5 to Schedule 10 of this Agreement.



Engineering and Construction Contract

OPTION C: TARGET CONTRACT WITH ACTIVITY SCHEDULE

This contract should be used for the appointment of a contractor for engineering and construction work, including any level of design responsibility

An NEC document

June 2017

(with amendments January 2023)

The Government Construction Board, Cabinet Office UK

The Government Construction Board (formerly Construction Clients' Board) recommends that public sector organisations use the NEC contracts and in particular the NEC4 contracts where appropriate, when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of the Government Construction Strategy.

The Development Bureau, HKSAR Government

The Development Bureau recommends the progressive transition from NEC3 to NEC4 in public works projects in Hong Kong. With suitable amendments to adapt to the Hong Kong local environment, NEC4 is expected to further enhance collaborative partnering, unlock innovations and achieve better cost management and value for money in public works projects.

NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a suite of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC4 Engineering and Construction Contract is one of the NEC suite and is consistent with all other NEC4 documents. Also available are User Guides, Flow Charts and Options A, B, D, E and F.

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ISBN (Selecting a Supplier) 978-0-7277-6234-4

ISBN (Managing an Engineering and Construction Contract) 978-0-7277-6235-1

ISBN (Engineering and Construction Contract Flow Charts) 978-0-7277-6267-2 (e-only)

ISBN (Option A: Priced contract with activity schedule) 978-0-7277-6311-2

ISBN (Option B: Priced contract with bill of quantities) 978-0-7277-6312-9

ISBN (Option D: Target contract with bill of quantities) 978-0-7277-6314-3

ISBN (Option E: Cost reimbursable contract) 978-0-7277-6315-0

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Reprinted with amendments January 2023

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Foreword

Continuous improvement in project delivery is required to build confidence in the UK construction sector so that we can attract more investment. The Infrastructure and Projects Authority (IPA) is the government's centre of expertise for infrastructure and major projects. We sit at the heart of government, reporting to the Cabinet Office and HM Treasury.

The application of the right contract is central to the success of the overall project delivery system. The NEC suite of contracts has been in existence for over the 20 years and has linked the projects, people and processes together to create the correct environment for successful delivery.

This new and updated NEC4 contract embraces the digital changes that are happening in the construction industry, especially around BIM, which I believe will be central to creating a step change in performance. Whilst looking forward it also builds on the fundamentals required for an effective contract.

The use of NEC4 on public sector projects will help to deliver the Government Construction Strategy as we seek to improve central government's capability as a construction client to deliver further savings in the order of £1.7bn across the Government estate. The IPA looks forward to collaborating with industry to make the delivery of projects more efficient and effective.

Tony Meggs, Chief Executive, Infrastructure and Projects Authority



**Infrastructure
and Projects
Authority**

Reporting to Cabinet Office
and HM Treasury

Preface

NEC was first published as a new and innovative way of managing construction contracts in 1993 – some 24 years ago. It was designed to facilitate and encourage good management of risks and uncertainties, using clear and simple language.

The NEC approach to managing contracts was endorsed in “Constructing the team – The Latham Report”, which was a government/industry review of procurement and contractual arrangements in the UK construction industry. This led to a second edition in 1995 incorporating the further recommendations of that review. This contract was used increasingly in the UK and overseas, and a major revision was made with the third edition in 2005.

NEC has played a part in helping the industry do things differently and better. It has done so by introducing effective project management procedures into the contract itself. These require pro-active management of risk and change, and the day-to-day use of an up-to-date programme. The range of pricing options has given Clients flexibility in the allocation of risk and the ability to share risk and manage it, collaboratively.

The NEC suite has evolved over three decades, embedding consultation responses and user feedback, and reflecting industry development, including new procurement approaches and management techniques such as alliances, management of information (BIM) and supply chain engagement. This feedback and the new procurement approaches formed the driver for the development of the next generation contracts and the launch of NEC4.

There were three key objectives in drafting NEC4:

- provide greater stimulus to good management
- support new approaches to procurement which improve contract management and
- inspire increased use of NEC in new markets and sectors.

It was to be evolution, not revolution.

Some features of NEC4 include:

- a new design build and operate contract to allow flexibility between construction and operational requirements in timing and extent
- a new multi-party alliance contract based upon an integrated risk and reward model
- new forms of subcontract to improve integration of the supply chain.

Further enhancements include:

- finalising cost elements during the contract
- incorporating a party-led dispute avoidance process into the adjudication process
- increasing standardisation between contracts and
- providing enhanced guidance to give greater practical advice to users.

NEC has always been known for its innovative approach to contract management, and this revision continues that approach. No other contract suite has had such a transformative effect on the built environment industry as NEC. It has put the collaborative sharing of risk and reward at the heart of modern procurement. It is also unique in providing a complete, back-to-back procurement solution for all works, services and supplies in any sector and any country.

NEC4 continues to set the benchmark for best practice procurement worldwide.

Peter Higgins BSc (Hons), CEng, FICE
Chair of NEC4 Contract Board

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Amendments

JANUARY 2019

The following amendments have been made to the June 2017 edition.

Page	Clause/location	Amendments
10	28.1	Clause amended
17	50.9	Clause amended
25	63.5	Clause amended
31	90.2	Clause amended
34	W1 preamble	Preamble amended
34	W1.1(1)	Clause amended
37	W2.1(1)	Clause amended
41	W3.3(2)	Clause amended
47	X15.6	Clause added
62	Contract Data Part one: General	Preamble amended
68	Contract Data Part one: resolving and avoiding disputes	Optional statement for W3 deleted
76	Contract Data Part one: resolving and avoiding disputes	Optional statement for W3 added

Full details of these amendments can be found at www.neccontract.com.

OCTOBER 2020

The following amendments have been made to the June 2017 edition.

Page	Clause/location	Amendments
43	X7.1	Clause amended
45	X10.7(1)	Clause amended
45	X10.7(2)	Clause amended
50	X22	Clause amended
53	Y(UK)1	Clause amended
63	Contract Data Part One: General	Preamble amended
74	Contract Data Part One: Y(UK)1	Entry amended

Full details of these amendments can be found at www.neccontract.com.

JANUARY 2023

The following amendments have been made to the October 2020 edition.

Page	Clause/location	Amendments
9	22.1	Clause amended
38	W2.3	Clause amended
50	X22	Clause amended
53	X29	Clause added
62	Schedule of Cost Components	Component 1 amended
63	Schedule of Cost Components	Component 26 amended
66	Contract Data part one: General	Preamble amended
71	Contract Data part one: X29	Entry added
81	Contract Data part two: X29	Entry added
82	Contract Data part two: Data for the Schedule of Cost Components	Entry amended

Full details of these amendments can be found at www.neccontract.com.

Schedule of Options

RESOLVING AND AVOIDING DISPUTES

One of the following procedures for resolving and avoiding disputes must be selected to complete the chosen main Option.

Option W1	Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply
Option W2	Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies
Option W3	Used when a Dispute Avoidance Board is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply

SECONDARY OPTIONS

The following secondary Options should be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

Option X1	Price adjustment for inflation
Option X2	Changes in the law
Option X4	Ultimate holding company guarantee
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X8	Undertakings to the <i>Client</i> or Others
Option X9	Transfer of rights
Option X10	Information modelling
Option X11	Termination by the <i>Client</i>
Option X12	Multiparty collaboration (not used with Option X20)
Option X13	Performance bond
Option X14	Advanced payment to the <i>Contractor</i>
Option X15	The <i>Contractor's</i> design
Option X16	Retention
Option X17	Low performance damages
Option X18	Limitation of liability
Option X20	Key Performance Indicators (not used with Option X12)
Option X21	Whole life cost
Option X22	Early <i>Contractor</i> involvement

Option X29 Climate change

The following Options dealing with national legislation should be included if required.

Option Y(UK)1 Project Bank Account

Option Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996

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

Option Z *Additional conditions of contract*

Note Options X3 and X19 are not used

Core Clauses

1. GENERAL

Actions	10	
	10.1	The Parties, the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract.
	10.2	The Parties, the <i>Project Manager</i> and the <i>Supervisor</i> act in a spirit of mutual trust and co-operation.
Identified and defined terms	11	
	11.1	In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.

- 11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the Project Manager. The latest programme accepted by the Project Manager supersedes previous Accepted Programmes.
- (2) Access Regime means:
- for Stages One and Two the constraints set out in S200 of the Scope; and
 - for Stage Two the access regime to be developed by the Parties and agreed in Stage One.
- (3) The Activity Schedule is the *activity schedule* unless later changed in accordance with these *conditions of contract*.
- (4) Affiliate means:
- for Stage One, those Key Subcontractors identified in the Contract Data;
 - for Stage Two, those Key Subcontractors identified and agreed by Parties in Stage One; and
 - for Stage One and/or Stage Two, such other Key Subcontractors identified and agreed by the Parties in accordance with the Scope.
- (5) Beneficiary means any funder, purchaser and/or tenant of the whole or any part of the *works*, Site and/or Project.
- (6) BSA is the Building Safety Act 2022.
- (7) Completion is when the *Contractor* has:
- done all the work which the Scope states is to be done by the Completion Date and all deliverables identified in the Scope;
 - corrected notified Defects which would have prevented the *Client* from using the *works* or Others from doing their work; and
 - discharged all Consents (except to the extent stated in the Scope that specific Consents are to be the responsibility of the *Client*) which need to be complied with and discharged in order for the relevant *works* to be regarded as complete.
- (8) The Completion Date is the *completion date* unless later changed in accordance with the contract.
- (9) The Contract has the meaning given to it in the Form of Agreement.
- (10) The Contract Date is the date of execution by the Parties of the Form of Agreement.
- (11) Consents are those consents, planning applications and statutory requirement set out in the Scope.
- (12) A Critical Defect is a Defect which the *Project Manager* considers:
- threatens or impacts upon:
 - the health and safety of any person; and/or
 - the safety or security of the [REDACTED] whether in the Site Working Areas or any other place; and/or
 - causes or might reasonably be expected to cause:
 - delay or disruption to the work of Others;
 - any hinderance or nuisance to the conduct of the *Client's* business; and/or
 - damage to or impairment of the *Client's* reputation.
- (13) A Defect is
- a part of the *works* which is not in accordance with this contract; and/or
 - a part of the *works* designed by the *Contractor* which is not in accordance with
 - this contract, applicable law or the *Contractor's* design which the *Project Manager* has accepted.
- (14) The Defects Certificate is either a list of Defects that the *Supervisor* has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.
- (15) Defined Cost is the cost of the components in the Schedule of Cost Components less Disallowed Cost.
- (16) DEFRA Conditions means the conditions set out in Schedule 5 of the Contract.

(17) Direct Losses means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses.

(18) Disallowed Cost is cost which

- is not justified by the *Contractor's* accounts and records, any audit carried out by or on behalf of the *Client* or the terms of this contract;
- for Stage One, exceeds the *people rate* for the relevant category of person;
- should not have been paid to a Subcontractor or supplier in accordance with its contract;
- was incurred only because of a Wilful Default;
- was incurred only because the *Contractor* did not:
 - follow an acceptance or procurement procedure stated in the Scope;
 - comply with the processes in this contract or a subcontract of a Key Subcontractor, including without limitation the provisions set out in core clause 70;
 - comply with the quality plan provided pursuant to clause 40.2;
 - give an early warning which the contract required it to give; and/or
 - give notification to the *Project Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier,

and the cost of

- correcting Defects (including repeating tests and inspections) after Completion;
- correcting Defects caused by the *Contractor* not complying with a constraint on how it is to Provide the Works stated in the Scope;
- rectifying the failure to meet a target for any Key Performance Indicator to the extent that such costs are not permitted by any agreed performance improvement plan;
- any person or organisation employed or engaged by the *Contractor* or any Subcontractor to replace a *key person* where the *Contractor* has not complied with the provisions of core clause 24 or secondary option X22 (as the case may be);
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Scope;
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested; and
- preparation for and conduct of an adjudication, payments to a member of the Dispute Avoidance Board or proceedings of the *tribunal* between the Parties.

(19) The Early Warning Register is a register of matters which are

- listed in the Contract Data for inclusion; and
- notified by the *Project Manager* or the *Contractor* as early warning matters.

It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.

(20) Equipment is items provided and used by the *Contractor* to Provide the Works and which the Scope does not require the *Contractor* to include in the works.

(21) Exceptional Equipment is items of Equipment provided and used by the *Contractor* to Provide the Works and which in Stage One the Parties have identified and agreed are 'exceptional' for the purposes of clause 70.4.

(22) Exit Plan is the exit plan to be developed by the Parties in Stage One together with any revisions made to it.

(23) The Fee is the amount calculated by applying the fee percentage to the Defined Cost.

(24) Good Industry Practice means:

- in relation to the *Contractor's* obligations under the contract (save for any design obligations), the exercise of the degree of skill, care, diligence,

prudence, efficiency, foresight and timeliness as would be reasonably expected from a skilled and experienced *Contractor* engaged in a similar type of works as the *Contractor* under this contract.

- (25) Guarantor means [REDACTED] or any replacement guarantor agreed by the *Client* acting reasonably.
- (26) Indirect Losses mean loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of goodwill or reputation, but the Parties agree that for the purposes of this contract the following are Direct Losses:
- losses incurred by the *Client* arising out of or in connection with any third party claim against the *Client*;
 - liability of any kind to any third party;
 - wasted expenditure;
 - delay damages;
 - any share payable or allowable by a party to the other in accordance with clause 54;
 - Defined Cost;
 - Fee;
 - internal time and external professional fees;
 - the costs of procuring and implementing a replacement contractor(s) to Provide the Works;
 - any other damages which are recoverable in law,
- to the extent that such losses, liabilities, expenditure, damages, fees and/or costs have been caused or contributed to by the fault or omission of the *Client* or the *Contractor* or by any person employed by or contracted to it (as the case may be).
- (27) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the key date stated in the Contract Data and the Condition is the condition stated in the Contract Data unless later changed in accordance with the contract.
- (28) A Key Subcontractor means:
- any Affiliate;
 - for Stage One those subcontractors set out in the Contract Data and/or identified by the Project Manager (acting reasonably) and taking into account:
 - the value;
 - complexity;
 - critical functionality; and/or
 - limited availability,of the applicable subcontract package; and/or
 - the proposed role of the subcontractor under the Stage Two works;
 - for Stage Two those subcontractors identified and agreed by the Parties in Stage One; and/or
 - for Stage One and/or Stage Two, such other subcontractors identified and agreed by the Parties in accordance with the Scope.
- mjr* (29) Lot Contract means the contract between the *Client* and Laing O'Rourke for the construction of B951 on the Project dated ~~xx~~ 7/5/2025
- (30) Lot Contractor means Laing O'Rourke Delivery Limited in its role as contractor under the Lot Contract.
- (31) Notice to Proceed means the form set out in Part 6 of Schedule 8 of the Contract and includes the revised:
- Contract Data
 - Site Information;
 - Access Regime;
 - Accepted Programme; and/or
 - any other relevant documents
- (32) Open Book is an approach which is transparent and includes the unrestricted provision to the *Client* (or its nominee) of information in the *Contractor's* possession or control (subject to legal professional privilege and not information that shows the build-up of the rates or any new rate after it is accepted by the Project Manager) to enable effective verification of Defined Cost and/or to determine whether the

Contractor (including any Affiliate) has benefitted from any refunds or reverse payments under the contract.

- (33) Others are people or organisations who are not the *Client*, the Project Manager, the Supervisor, the Adjudicator or a member of the Dispute Avoidance Board, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*. Others include the *Client's* other contractors but do not include consultants or appointees who are acting for or on behalf of the *Client* in carrying out the *Client's* own activities.
- (34) The Parties are the *Client* and the *Contractor* and a Party is either the *Client* or the *Contractor*.
- (35) The People Rates are the people rates unless later changed in accordance with this contract.
- (36) Plant and Materials are items intended to be included in the works.
- (37) The Price for Work Done to Date is the total Defined Cost which the Project Manager forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.
- (38) The Price List is the price list attached at Schedule 7 of the contract.
- (39) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with the contract.
- (40) Principal Contractor is the duty holder referred to as the 'principal contractor' under the BSA and CDM Regulations and nominated as such by the *Client* from time to time.
- (41) The Project is the design and construction of the [REDACTED]
- (42) To Provide the Works means to do the work necessary to complete the works in accordance with the contract and all incidental work, services and actions which the contract requires.
- (43) Resources Schedule means the resources schedule set out in part S603 of the Scope.
- (44) Security Aspects Letter is the *Contractor's* signed security aspects letter in the form set out in Schedule 10 of the Contract.
- (45) Scope is information which
- specifies and describes the *works*; or
 - states any constraints on how the *Contractor* Provides the Works, and is either;
 - in the documents which the Contract Data states it is in; or
 - in an instruction given in accordance with the contract;provided that neither the Accepted Programme, nor any method statement attached thereto, form part of the Scope.
- (46) The Site is the area within the boundaries of the site and the volumes above and below it which are affected by work included in the contract.
- (47) Site Information is information which
- describes the Site and its surroundings; and
 - is in the documents which the Contract Data states it is in.
- (48) A Specified Peril means fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion.
- (49) Standard of Care means the reasonable skill, care and diligence to be expected of a fully competent consultant experienced in performing and carrying out services of a similar scope, nature, complexity and timescale to the relevant services set out in the Scope.
- (50) A Subcontractor is a person or organisation who has a contract with the *Contractor* to:
- execute, construct or install part of the works;
 - design all or part of the works, except the design of Plant and Materials carried out by the supplier; or

- provide a service in the Working Areas which is necessary to Provide the Works, except for the hire of Equipment or supply of people paid for by the *Contractor* according to the time they work.

(51)

(52) Wilful Default is an intentional and deliberate fault or omission by the *Contractor* or any of its personnel.

(53) The Working Areas are the Site and those parts of the working areas which are:

- necessary for Providing the Works; and
- used only for work in the contract, unless later changed in accordance with the contract.

11.3 Other words and expressions in these conditions of contract have the meanings given to them in the Form of Contract.

Interpretation and the law

12

- 12.1 In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round.
- 12.2 The contract and any non-contractual obligations arising out of or in relation to it are governed by the *law of the contract*.
- 12.3 No change to the contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 The contract is the entire agreement between the Parties and in entering into this contract, neither Party relies on any representations made by the other Party.
- 12.5 In this contract any reference to:
- statutes or regulations includes references to statutes or statutory provisions which amend, consolidate, retain into the law of the contract or replace the same or which are amended, consolidated or replaced by the same;
 - a public organisation references any successor (statutory or otherwise) public organisation which has taken over the functions and duties of such public organisation;
 - fault includes negligence, default, breach of statutory duty or breach of contract by or insolvency of the Party or other entities engaged by them or for whom they are responsible (including, in the case of the *Contractor*, Subcontractors and subcontractors at a lower tier of the supply chain);
 - work includes services as the context permits; and/or
 - absolute discretion of the Project Manager or of the *Client* means that such party is entitled to exercise that discretion however they wish to, including without regard to any provision of this contract (including clause 10).

Communications

13

- 13.1 Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of the contract*.
- 13.2 If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope. If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If the contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in these *conditions of contract*, they reply within the *period for reply*.

- 13.4 The *Project Manager* replies to a communication submitted or resubmitted by the *Contractor* for acceptance. If the reply is not acceptance, the *Project Manager* states the reasons in sufficient detail to enable the *Contractor* to correct the matter. The *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the period for reply to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* informs the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues certificates to the *Client* and the *Contractor*. The *Supervisor* issues certificates to the *Project Manager*, the *Client* and the *Contractor*.
- 13.7 A notification or certificate which the contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in these *conditions of contract* is not a compensation event.

The *Project Manager* and the *Supervisor*

- 14
- 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or acceptance of the work does not change the *Contractor's* responsibility to Provide the Works or liability for its design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Project Manager* or the *Supervisor* in the contract includes an action by their delegate. The *Project Manager* and the *Supervisor* may take an action which they have delegated.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the:
- Scope;
 - (with the exception of any change to accelerate a Key Date, in which case clause 36 shall apply) a Key Date, including the Condition stated;
 - for Stage One, Site Information; or
 - any other matter which the *Client* notifies to the *Contractor* in writing that the *Project Manager* has the authority to change.
- 14.4 The *Client* may replace the *Project Manager* or the *Supervisor* after notifying the *Contractor* of the name of the replacement.

Early warning

- 15
- 15.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could:
- increase the total of the Prices;
 - delay Completion;
 - delay meeting a Condition stated for a Key Date;
 - impair the performance of the *works* in use or the Project (or any part thereof);
 - result in the need to replace a *key person*;
 - cause nuisance or disturbance to any Other or disturb the business of the *Client*;
 - affect the work of the *Client* or Other;
 - affect a *Client's* liability;
 - affect the *Client's* rights and/or remedies against a Key-Subcontractor and/or a Subcontractor;
 - affect the availability of a key person or its replacement;
 - result in non-compliance by any party or any Other with a Consent;

- give rise to the need for any additional or revised Consent; or
- any other matter identified in the Scope.

The *Project Manager* may give and the *Contractor* gives an early warning by notifying the other as soon as either becomes aware of any other matter which could increase the *Contractor's* total cost or the total cost of the Project. The *Project Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.

- 15.2 The *Project Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date*. The *Project Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date*.

Later early warning meetings are held:

- if either the *Project Manager* or *Contractor* instructs the other to attend an early warning meeting, and, in any case;
- at no longer interval than the interval stated in the Contract Data until Completion of the whole of the works.

The *Project Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor or an Other attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in:
- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced;
 - seeking solutions that will bring advantage to all those who will be affected;
 - deciding on the actions which will be taken and who, in accordance with the contract, will take them;
 - deciding which matters can be removed from the Early Warning Register; and
 - reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.

- 15.4 The *Project Manager* revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the *Contractor* within one week of the early warning meeting. If a decision needs a change to the Scope, the *Project Manager* instructs the change at the same time as the revised Early Warning Register is issued.

Contractor's proposals

- 16
- 16.1 The *Contractor* may propose to the *Project Manager* that the Scope provided by the *Client* is changed in order to reduce the amount the *Client* pays to the *Contractor* for Providing the Works. The *Project Manager* consults with the *Client* and the *Contractor* about the change.
- 16.2 Within four weeks of the *Contractor* making the proposal the *Project Manager*:
- accepts the *Contractor's* proposal and issues an instruction changing the Scope;
 - informs the *Contractor* that the *Client* is considering the proposal and instructs the *Contractor* to submit a quotation for a proposed instruction to change the Scope; or
 - informs the *Contractor* that the proposal is not accepted.
- The *Project Manager* may refuse to accept the proposal at its absolute discretion. The *Contractor* does not implement the agreed changes until the *Project Manager* issues a notice to the *Contractor* instructing any such agreed changes.
- 16.3 The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that the proposed area is:
- not necessary for Providing the Works; or
 - used for work not in the contract.
-

Requirements for instructions	17	
	17.1	Subject to clause 17.3, the <i>Project Manager</i> or the <i>Contractor</i> notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The <i>Project Manager</i> states how the ambiguity or inconsistency should be resolved.
	17.2	The <i>Project Manager</i> or the <i>Contractor</i> notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the <i>Project Manager</i> considers that the Scope does include an illegal or impossible requirement, the <i>Project Manager</i> gives an instruction to change the Scope appropriately.
	17.3	Prior to the date of the issue of the notice to proceed pursuant to secondary option clause X22.5, the Contractor is assumed to have proactively and diligently reviewed and raised all queries (including in relation to any ambiguity, discrepancy, omission, mistake and/or inconsistency) in or between the documents, as would be expected of a competent and experienced contractor, exercising the Standard of Care Provided that the Contractor has complied with this clause 17.3, any ambiguity, discrepancy, omission, mistake and/or inconsistency in or between the documents may entitle the Contractor to a compensation event in accordance with this contract.
Corrupt Acts	18	Not used.
Prevention	19	
	19.1	If an event occurs which: • stops the <i>Contractor</i> completing the whole of the <i>works</i>; or • stops the <i>Contractor</i> completing the whole of the <i>works</i> by the date for planned Completion shown on the Accepted Programme, and which: • neither Party could prevent; and • an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it, the <i>Project Manager</i> gives an instruction to the <i>Contractor</i> stating how the event is to be dealt with.

2. THE CONTRACTOR'S MAIN RESPONSIBILITIES

Providing the Works	20	
	20.1	The <i>Contractor</i> Provides the Works in accordance with: • this contract; • the Access Regime; • all Consents; • Good Industry Practice; and • all applicable laws.
	20.2	The <i>Contractor</i> advises the <i>Project Manager</i> on the practical implications of the design of the <i>works</i> and on subcontracting arrangements.
	20.3	The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>works</i> in consultation with the <i>Project Manager</i> and submits them to the <i>Project Manager</i> . Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>works</i> . An explanation of the changes made since the previous forecast is submitted with each forecast.
The Contractor's design	21	
	21.1	The <i>Contractor</i> designs the parts of the <i>works</i> which the Scope states the <i>Contractor</i> is to design.
	21.2	The <i>Contractor</i> submits the particulars of its design as the Scope requires to the <i>Project Manager</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with this contract, all Consents or the applicable law. The <i>Contractor</i> does not proceed with the relevant work until the <i>Project Manager</i> has accepted its design.
	21.3	The <i>Contractor</i> may submit its design for acceptance in parts if the design of each part can be assessed fully.
Using the Contractor's design	22	Not used.
Design of Equipment	23	
	23.1	The <i>Contractor</i> designs Equipment and temporary works. The <i>Contractor</i> submits particulars of the design of an item of Equipment or temporary works to the <i>Project Manager</i> for acceptance if the <i>Project Manager</i> instructs the <i>Contractor</i> to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Works in accordance with: • the Scope; • the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted; • the applicable law; • a Consent; or • any other reason stated in this contract.
	23.2	If the <i>Contractor</i> is required to submit particulars of the design of an item of Equipment to the <i>Project Manager</i> for acceptance, the <i>Contractor</i> does not proceed with the provision of the relevant Equipment until its design has been accepted.
	23.3	The only effect of an acceptance by the <i>Project Manager</i> of a submission by the <i>Contractor</i> of particulars of the design of an item of Equipment is to allow the <i>Contractor</i> to proceed with the relevant item of Equipment and the <i>Project Manager's</i> acceptance does not carry any

implication that the quality, efficacy or compliance of the *Contractor's* design has been tested or verified by the *Project Manager* or the *Supervisor*.

People

24

24.1

The *Client* and the *Contractor* agree that the *key persons* are critical to the successful delivery of the works and all *key persons* possess the necessary skills required for the *Contractor* to Provide the Works, including the design services. The *Contractor* employs or engages each *key person* named to do the job stated in the Contract Data or employs or engages a replacement person who has been accepted by the *Project Manager* in accordance with this clause 24.

The *Contractor* does not replace or permit a Subcontractor to replace a key person unless:

- it is instructed by the *Project Manager* to do so;
- the person ceases to be employed or engaged by the *Contractor* or a Subcontractor or no longer provides services to the *Contractor* or a Subcontractor; or
- a replacement is necessary due to ill-health, death, personal injury or personal hardship suffered by the *key person*.

A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced.

24.2

The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a person. The *Contractor* then arranges that, after one day, or such other reasonable time as the *Project Manager* may require and identify to the *Contractor*, the person has no further connection with the work included in the contract.

**Working with
the *Client* and
Others**

25

25.1

The *Contractor* co-operates with the *Client*, the *Project Manager*, and Others, including in obtaining and providing information which Others need in connection with their works and the works and the Project.

The *Contractor* shares the Site and the Working Areas with Others as stated in the Scope and/or as provided for in the Access Regime and consults and co-operates with the *Client*, the *Project Manager* and Others as required to Provide the Works and in the planning and programming of the works. The *Contractor*:

- where necessary to Provide the Works, holds or attends meetings with Others, the *Contractor* informs the *Client* and the *Project Manager* of these meetings beforehand and the *Client* and the *Project Manager* may attend them; and
- attends all meetings which the *Project Manager* requests it to attend.

25.2

The *Client* and the *Contractor* provide services and other things as stated in the Scope. Any cost incurred by the *Client* as a result of the *Contractor* not providing the services and other things which it is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

25.3

If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the Key Date stated and, as a result, the *Client* incurs additional cost either:

- in carrying out work;
- by paying an additional amount to Others in carrying out work; or
- by paying an additional amount to Others under a Consent.

on the Project, then the reasonable and direct additional cost which the *Client* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within eight weeks of the date when the Condition for the Key Date is met. The *Client's* right to recover the additional cost is its only right in these circumstances.

25.4

Access to the Site and Working Areas by Others

The *Contractor* complies with its obligations under the Access Regime and where applicable allows Others notified by the *Project Manager* access to the Site and Working Areas (including the works) to carry out their works.

26.1 If the *Contractor* subcontracts work:

- it is responsible for Providing the Works as if it had not subcontracted and it is responsible for the acts and omissions of its Subcontractors and any subcontractors at a lower tier of the supply chain as if they were the acts and omissions of the *Contractor*;
- this contract applies as if the people and equipment used to provide the subcontracted work were the *Contractor's*;
- it ensures that where it benefits from any refunds or reverse payments from any Subcontractor and any subcontractor at a lower tier of the supply chain, that it passes such refunds or reverse payments to the *Client* in full;
- it ensures that each Subcontractor and any subcontractor at a lower tier of the supply chain complies with the requirements of the Security Aspects Letter and/or any other requirements of this contract expressly identified in part S1200 of the Scope;
- it ensures that each Subcontractor and any subcontractor at a lower tier of the supply chain takes out and maintains insurances that are commensurate with the works and/or services provided by that subcontractor;
- in relation to a Key-Subcontractor, it gives the *Client* a true copy of each subcontract entered into by the *Contractor* as soon as it is entered into.

26.2 The *Contractor* does not appoint a proposed Key-Subcontractor until the *Project Manager* has accepted the Key-Subcontractor and, to the extent these *conditions of contract* require, accepted the subcontract documents.

The *Contractor* submits the name of each proposed Key-Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Key-Subcontractor is that:

- the appointment will not allow the *Contractor* to Provide the Works or comply with its obligations under this contract;
- regarding a Key-Subcontractor, the proposed Key-Subcontractor has not been procured in accordance with the relevant provisions or other requirements stated in the Scope; and/or
- any other reason stated in this contract including without limitation clause A12 of the Defra Conditions.

26.3 The *Contractor* submits the proposed subcontract documents for each Key-Subcontractor subcontract to the *Project Manager* for acceptance unless the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Key-Subcontractor on the proposed subcontract documents submitted until the *Project Manager* has accepted the Key-Subcontractor. A reason for not accepting the relevant subcontract is that:

- the proposed subcontract documents are not consistent with the Scope and the DEFRA Conditions;
- their use will not allow the *Contractor* to Provide the Works in accordance with, or to comply with its obligations under, this contract;
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation;
- they do not require the Key-Subcontractor to comply with the Access Regime, they do not include a provision that cascades down appropriate incentivisation and KPIs to the Key-Subcontractor, unless the *Project Manager* has instructed or agreed that this is not required;
- they are not to be executed as a deed or are not to carry a twelve (12) year limitation period, unless the *Project Manager* has instructed or agreed that this is not required;
- they are not governed by the law of England and Wales;
- the *Contractor* does not demonstrate that it passes refunds or reverse payments from the proposed Key-Subcontractor to the *Client* in full;
- the Key-Subcontractor does not have the competency and/or capacity to carry out and complete the proposed scope of the subcontract works to allow the *Contractor* to Provide the Works in accordance with the contract;

- they do not require the Key-Subcontractor (and its guarantor(s) if applicable) to execute and deliver deeds of Collateral Warranty in favour of the beneficiaries, in the forms and at the times required by this contract;
 - they do not allow for payments to be made in accordance with Y(UK)1; or
 - any other reason stated in this contract.
- 26.4 The *Contractor* submits the pricing information (including any advanced payment terms or breakage costs) in the proposed subcontract documents for each subcontract to the *Project Manager* unless the *Project Manager* has agreed that no submission is required.
- 26.5 Where the proposed Key-Subcontractor is an Affiliate, further reasons for the *Project Manager* not accepting the proposed Key-Subcontractor or subcontract documents are that the *Contractor* does not demonstrate the following:
- the subcontract represents an arm's length commercial arrangement;
 - there are appropriate systems and procedures in place to operate and manage the subcontract at arm's length;
 - the proposed Key-Subcontractor's fee or other commercial terms are reflective of a fair and competitive market rate or are value for money; and/or
 - the proposed subcontract has been competitively tendered or that the proposed subcontract represents value for money using benchmarking data (as applicable).
- 26.6 The *Contractor* carries out subcontracting in accordance with any other relevant procedures and other requirements stated in the Scope.
- 26.7 Subject to clause 26.8, the *Contractor* does not:
- vary or amend the terms (including any advanced payment or breakage costs) of a Key-Subcontractor's subcontract it has entered into;
 - waive or prejudice its rights, remedies or entitlements against a Key-Subcontractor or under any related performance security; or
 - except where the claim relates to professional indemnity insurance, settle or compromise any claim against a Key-Subcontractor where the value of the claim is above [REDACTED] and/or a Subcontractor where the value of the claim is above [REDACTED]
- without the *Client's* prior approval (acting reasonably).
- 26.8 The Parties agree that where a claim against a Key-Subcontractor and/or a Subcontractor relates to professional indemnity insurance maintained by a Key-Subcontractor and/or a Subcontractor (as the case may be) the *Contractor* may settle or compromise any claim against a Key-Subcontractor and/or a Subcontractor (as the case may be) without the *Client's* prior approval provided that the *Contractor* has raised an early warning in relation to such proposed settlement or compromise.
- 26.9 The *Contractor* operates on an Open Book basis in relation to demonstrating compliance with the requirements of this contract.

Other responsibilities

- 27
- 27.1 Not used.
- 27.2 The *Contractor* provides access, including all necessary facilities and services for such access, to work being done and to Plant and Materials being stored for the contract for:
- the *Project Manager*;
 - the *Supervisor*;
 - Others pursuant to the Access Regime; and

- Others as named by the *Project Manager*.

- 27.3 The *Contractor* obeys an instruction which is in accordance with the contract and is given by the *Project Manager* or the *Supervisor*.
- 27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Scope.
- 27.5 The *Contractor* is the Principal Contractor under the BSA and the CDM Regulations for the Working Areas.
The *Contractor* monitors compliance with all necessary site regulations and the *Project Manager's* reasonable directions with regard to any works by Others and to any associated health and safety matters.

Assignment	28	Not used.
	28.1	

Disclosure	29	
	29.1	
	29.2	
	29.3	

The Parties do not disclose information obtained in connection with the *works* except when necessary to carry out their duties under the contract.

The *Contractor* may publicise the *works* only with the *Client's* agreement.

Notwithstanding the DEFRA Conditions where applicable, the *Client* owns the copyright in this contract and any data relating to this contract. The *Client* reserves the right to determine whether the results of the *works* shall be published and if so on what conditions.

3. TIME

Starting, Completion and Key Dates	30	
	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and proceeds regularly and diligently with the work so that Completion is on or before the Completion Date.
	30.2	The <i>Project Manager</i> decides the date of Completion and certifies it within one week of the date.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
The programme	31	
	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
	31.2	The <i>Contractor</i> shows on each programme submitted for acceptance: • the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date; • planned Completion; • the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works; • the order and timing of the work of the <i>Client</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Scope; • the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Client</i> and Others to do their work; • provisions for: – float; – time risk allowances; – health and safety requirements; and/or – the procedures set out in the contract; • the dates when, in order to Provide the Works in accordance with the programme, the <i>Contractor</i> will need: – access to a part of the Site or, if later than its <i>access date</i>; – acceptances; – Plant and Materials and other things to be provided by the <i>Client</i> or Others; and/or – information from Others; • for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which will be used; and • other information which the Scope requires the <i>Contractor</i> to show on a programme submitted for acceptance. A programme issued for acceptance is in the form stated in the Scope.
	31.3	Within two weeks of the <i>Contractor</i> submitting a programme for acceptance, the <i>Project Manager</i> notifies the <i>Contractor</i> of the acceptance of the programme or the reasons for not accepting it. A reason for not accepting a programme is that: • the <i>Contractor's</i> plans which it shows are not practicable; • it does not show the information which the contract requires; • it does not represent the <i>Contractor's</i> plans realistically; or • it does not comply with the Scope, Consents and/or the Access Regime. If the <i>Project Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the failure continues for a further one week after the <i>Contractor's</i> notification, it is treated as acceptance by the <i>Project Manager</i> of the programme.

Revising the programme	32	
	32.1	The <i>Contractor</i> shows on each revised programme: - the actual progress achieved on each operation and its effect upon the timing of the remaining work; - the effects of implemented compensation events; - how the <i>Contractor</i> plans to deal with any delays (including all measures to be taken to reduce or mitigate any delay) and to correct notified Defects; and - any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme since the date of the last Accepted Programme.
	32.2	The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance: - within the <i>period for reply</i> after the <i>Project Manager</i> has instructed the <i>Contractor</i> to; - when the <i>Contractor</i> chooses to and, in any case; - at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the <i>works</i>.
	32.3	If the <i>Project Manager</i> does not accept a revised programme submitted for acceptance, the <i>Contractor</i> submits a further revised programme for acceptance which addresses the reason for non-acceptance within one week of the <i>Project Manager's</i> notification.
Access to and use of the Site	33	
	33.1	The <i>Client</i> allows access to and use of each part of the Site to the <i>Contractor</i> which is necessary for the work included in the contract. Access and use is allowed on or before the later of - its <i>access date</i>; - the date for access shown on the Accepted Programme; and/or - any other date for such access which has been ascertained in accordance with the Access Regime.
	33.2	The <i>Contractor</i> makes its own arrangements for access to and from the Site and Working Areas in accordance with the Scope and/or the Access Regime unless the <i>Client</i> makes arrangements for such access over land in its control or possession.
	33.3	The <i>Client</i> is not treated as having failed to give access within and use of the Site if - in respect of such Site the <i>Contractor</i> fails to: - comply with the requirements of the Scope for such access, including the identification of access that the <i>Client</i> is to obtain and the notification periods required to enable the <i>Client</i> to obtain such access; - obtain or comply with any Consents it is required to obtain or comply with for such access or use; and/or - comply with the requirements of the Access Regime; or - the <i>Contractor</i> wishes to Provide the Works otherwise than in accordance with any of the Consents which the Contractor is required to comply with.
	33.4	The Contractor complies and ensures all its people and the people of subcontractors of any tier at all times comply with the Access Regime and adhere to any restrictions and conditions set out in the Scope while on any part of the [REDACTED] whether within the Site or not).
Instructions to stop or not to start work	34	
	34.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not start any work. The <i>Project Manager</i> subsequently gives an instruction to the <i>Contractor</i> to: - re-start or start the work; or - remove the work from the Scope.
	34.2	Unless otherwise instructed by the <i>Project Manager</i>, the <i>Contractor</i> keeps secure and protects the works and all Equipment and Plant and Materials against any deterioration, loss,

damage or theft and maintains safety and implements reasonable demobilisation measures in relation to its people during any period when work is stopped or not started at the instruction of the *Project Manager*.

Take over

35

- 35.1 The *Client* does not take over the *works* before the Completion Date unless it is expressly stated in the Contract Data that it does so. Otherwise the *Client* takes over the *works* within two weeks after Completion.
- 35.2 The *Client* or Others may use the *works*, the Site and/or Working Areas (or any part or parts thereof) before Completion has been certified. The *Client* does not take over the *works* (or any part or parts thereof) if the use is:
- for a reason stated in the Scope;
 - to suit the *Contractor's* method of working;
 - for the purposes of testing and commissioning;
 - to rectify a Defect or Critical Defect (as provided for in the contract); or
 - in accordance with access established pursuant to the Access Regime.
- Where the *Client* or an Other uses the *works* for any of the above reasons, the *Contractor*:
- accommodates the activities of the *Client* and Others in order to minimise any delay or disruption to the *works* of Others and to the Project; and
 - continues to progress the *works* without delay.
- 35.3 The *Project Manager* certifies the date upon which the *Client* takes over any part of the *works* and its extent within one week of the date.

Acceleration

36

- 36.1 The *Contractor* and the *Project Manager* may propose to the other an acceleration to achieve Completion before the Completion Date and/or to meet a Condition stated for a Key Date before the Key Date. If the *Project Manager* and *Contractor* are prepared to consider the proposed change, the *Project Manager* instructs the *Contractor* to provide a quotation. The instruction states changes to the Key Dates to be included in the quotation. The *Contractor* provides a quotation within three weeks of the instruction to do so. The *Project Manager* replies to the quotation within three weeks. The reply is:
- a notification that the quotation is accepted; or
 - a notification that the quotation is not accepted and that the Completion Dates and Key Dates are not changed.
- 36.2 A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and/or the changed Key Dates. The *Contractor* submits details of the assessment with each quotation.
- 36.3 If a quotation for an acceleration is accepted, the *Project Manager* issues an instruction to accelerate and change (if and to the extent applicable) the Prices and (if and to the extent applicable in each case) the Completion Date and the Key Dates accordingly and accepts the revised programme. The *Contractor* does not put a proposed acceleration into effect unless the *Project Manager* formally accepts the quotation.
- 36.4 The *Contractor* submits a Subcontractor's proposal to accelerate to the *Project Manager* for acceptance.

4. QUALITY MANAGEMENT

Quality management system	40	
	40.1	The <i>Contractor</i> operates a quality management system which complies with the requirements stated in the Scope.
	40.2	Within the period stated in the Contract Data, the <i>Contractor</i> provides the <i>Project Manager</i> with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the <i>Contractor</i> to Provide the Works. If any changes are made to the quality plan, the <i>Contractor</i> provides the <i>Project Manager</i> with the changed quality plan for acceptance.
	40.3	The <i>Project Manager</i> may instruct the <i>Contractor</i> to correct a failure to comply with the quality plan. This instruction is not a compensation event.
	40.4	The <i>Contractor</i> warrants that the representations contained in the quality plan are accurate and may be relied upon by the <i>Client</i> .
Tests and inspections	41	
	41.1	This clause 41 only applies to tests and inspections required by the Scope, a Consent or the applicable law.
	41.2	The <i>Contractor</i> and the <i>Client</i> provide records, data sheets, materials, facilities and samples for tests and inspections as stated in the Scope.
	41.3	The <i>Contractor</i> and the <i>Supervisor</i> informs the other of each of their tests and inspections before the test or inspection starts and afterwards notifies the other of the results with full and detailed records as soon as reasonably practicable. The <i>Contractor</i> informs the <i>Supervisor</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Supervisor</i>, the <i>Project Manager</i> and Others authorised by the <i>Client</i> may watch any test done by the <i>Contractor</i> and see the results. If the <i>Contractor</i> fails to give to the <i>Supervisor</i> and the <i>Project Manager</i> (and any relevant Other) the required notice set out in the Scope, the <i>Supervisor</i> or <i>Project Manager</i> may require the <i>Contractor</i> to repeat the test or inspection.
	41.4	If a test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect and the test or inspection is repeated.
	41.5	The <i>Supervisor</i> does tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a <i>Supervisor's</i> test or inspection being successful becomes due at the later of the <i>defects date</i> and the end of the last <i>defect correction period</i> if: - the <i>Supervisor</i> has not done the test or inspection; and - the delay to the test or inspection is not the <i>Contractor's</i> fault.
	41.6	The <i>Project Manager</i> assesses the cost incurred by the <i>Client</i> when: - a test or inspection is repeated after a Defect is found; - the <i>Contractor</i> fails to give due notice to the <i>Supervisor</i> and <i>Project Manager</i> (or any relevant Other) of a test or inspection before it carries out that test or inspection; or - a test or inspection is carried out by the <i>Client</i> or Others where the <i>Contractor</i> fails to carry out a test or inspection (including a repeat test or inspection) that it is required to carry out in accordance with this contract or applicable law. The <i>Contractor</i> pays the amount assessed to the extent that such amount exceeds the applicable costs that would have been payable to the <i>Contractor</i> for carrying out such test or inspection.
	41.7	When the <i>Project Manager</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a Defect is found, the <i>Project Manager</i> does not include the <i>Contractor's</i> cost of carrying out the repeat test or inspection.

Testing and inspection before delivery	42	
	42.1	The <i>Contractor</i> does not bring to the Working Areas those Plant and Materials which the Scope states are to be tested or inspected before delivery until the <i>Supervisor</i> has notified the <i>Contractor</i> that they have passed the test or inspection.
Searching for and notifying Defects	43	Until the <i>defects date</i> , the <i>Supervisor</i> may instruct the <i>Contractor</i> to search for a Defect.
	43.1	The <i>Supervisor</i> gives reasons for the search with the instruction. Searching may include: • uncovering, dismantling, re-covering and re-erecting work; • providing facilities, materials and samples for tests and inspections done by the <i>Supervisor</i>; and • doing tests and inspections which the Scope does not require.
	43.2	Until the <i>defects date</i> the <i>Supervisor</i> and the <i>Contractor</i> notifies the other as soon as they become aware of a Defect.
Correcting Defects	44	The <i>Contractor</i> corrects a Defect (and for the purpose of core clauses 44 to 46, a Defect includes a Critical Defect) whether or not the <i>Supervisor</i> has notified it. Correcting a Defect includes correcting any loss of or damage to the works (whether or not those <i>works</i> have been taken over by the <i>Client</i>) which is caused by a Defect or which results from work done by the <i>Contractor</i> in order to correct a Defect.
	44.1	
	44.2	The <i>Contractor</i> submits a method statement for correcting a Defect to the <i>Project Manager</i> for acceptance unless the <i>Project Manager</i> has instructed or agreed that no submission is required. A reason for not accepting a method statement is the same as for not accepting a revised programme in accordance with clause 31.3 or the method statement does not show that the Defect will be corrected before the end of the <i>defect correction period</i> . The <i>Contractor</i> corrects a Defect in accordance with the accepted method statement.
	44.3	If the method statement for a notified Defect is not accepted, the <i>Project Manager</i> may notify the <i>Contractor</i> of their reasonable requirements for the correction of the Defect and the <i>Contractor</i> complies with those requirements without any compensation event arising.
	44.4	If the <i>Contractor</i> does not comply with the accepted method statement or the <i>Project Manager's</i> reasonable requirements for the correction of the Defect, the <i>Project Manager</i> may instruct the <i>Contractor</i> not to correct the Defect and the arrangements for uncorrected notified Defects set out in clause 46 will apply.
	44.5	The <i>Contractor</i> corrects a notified Defect before the end of the <i>defect correction period</i> . The <i>defect correction period</i> begins: • on notification for Critical Defects; • on Completion for Defects notified before Completion; or • when the Defect is notified for other Defects.
	44.6	The <i>Supervisor</i> issues the Defects Certificate at the <i>defects date</i> if there are no notified Defects, or otherwise at the earlier of: • the end of the last <i>defect correction period</i>; and • the date when all notified Defects have been corrected or accepted or the <i>Contractor</i> has paid the amount assessed by the <i>Project Manager</i> for having the Defect corrected by other people. The <i>Client's</i> rights in respect of a Defect which the <i>Supervisor</i> has not found or notified are not affected by the issue of the Defects Certificate.
	44.7	The <i>Project Manager</i> arranges for the <i>Client</i> to allow the <i>Contractor</i> access to and use of a part of the <i>works</i> which has been taken over if it is needed for correcting a Defect. In this case the <i>defect correction period</i> begins when the necessary access and use have been provided.

Accepting Defects	45	
	45.1	The <i>Contractor</i> and the <i>Client</i> may propose to the other that the Scope should be changed so that a Defect does not have to be corrected.
	45.2	If the <i>Contractor</i> and the <i>Project Manager</i> are prepared to consider the change, the <i>Contractor</i> submits a quotation for reduced Prices or an earlier Completion Date or any earlier Key Dates or all or any of them to the <i>Project Manager</i> for acceptance. If the quotation is accepted, the <i>Project Manager</i> gives an instruction to change the Scope, the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the <i>Project Manager</i> does not accept the quotation, the <i>Project Manager</i> gives an instruction to change the Scope and assess the change to the Prices, the Completion Date and the Key Dates.
Uncorrected Defects	46	
	46.1	If the <i>Contractor</i> is given access in order to correct a notified Defect but the Defect is not corrected within its <i>defect correction period</i> , the <i>Project Manager</i> assesses the cost to the <i>Client</i> of having the Defect corrected by other people and the <i>Contractor</i> pays this amount. The Scope is treated as having been changed to accept the Defect.
	46.2	If the <i>Contractor</i> is not given access in order to correct a notified Defect before the <i>defects date</i> , the <i>Project Manager</i> assesses the cost to the <i>Contractor</i> of correcting the Defect and the <i>Contractor</i> pays this amount. The Scope is treated as having been changed to accept the Defect.
Critical Defects	47.1	The <i>Client</i> may enter the Site or a Working Area and correct a Critical Defect if: • it has not been corrected within the defect correction period; or • at any time it reasonably appears to the <i>Client</i> that it must be corrected immediately to avoid harm, safety, security or disruption of the <i>Client's</i> business (but such correction may only be to the extent necessary to avoid or remedy the immediate harm). The <i>Project Manager</i> assesses the cost of such correction of Critical Defects and the <i>Contractor</i> pays this amount. The Scope is changed to accept the Critical Defect.

5. PAYMENT

Assessing the amount due 50

- 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until:
- the *Supervisor* issues the Defects Certificate; or
 - the *Project Manager* issues a termination certificate.
- 50.2 The *Contractor* submits an application for payment to the *Project Manager* before each assessment date setting out the amount the *Contractor* considers is due at the assessment date. The *Contractor's* application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.
- In assessing the amount due, the *Project Manager* considers an application for payment submitted by the *Contractor* before the assessment date.
- 50.3 If the *Contractor* submits an application for payment before the assessment date, the amount due at the assessment date is:
- the Price for Work Done to Date;
 - plus other amounts to be paid to the *Contractor*; and/or
 - less amounts to be paid by or retained from the *Contractor*.
- 50.4 If the *Contractor* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of:
- the amount the *Project Manager* assesses as due at the assessment date, assessed as though the *Contractor* had submitted an application before the assessment date; and
 - the amount due at the previous assessment date.
- 50.5 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which the contract requires.
- 50.6 The *Project Manager* corrects any incorrectly assessed amount due in a later payment certificate and taking into account the provisions of this contract including without limitation under clause A15 in the Defra Conditions.
- 50.7 **Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of the contract* are included in the amount due as payments to be made to it in the same currency. Such payments are converted to the *currency of the contract* in order to calculate the Fee and any *Contractor's* share using the *exchange rates*.**
- 50.9 The *Contractor* notifies the *Project Manager* when the Defined Cost for a part of the *works* has been finalised, and makes available for inspection the records necessary to demonstrate that it has been correctly assessed. The *Project Manager* reviews the records made available, and no later than thirteen weeks after the *Contractor's* notification:
- accepts that part of Defined Cost as correct;
 - notifies the *Contractor* that further records are needed; or
 - notifies the *Contractor* of errors in its assessment.
- The *Contractor* provides any further records requested or advises the correction of the errors in its assessment within four weeks of the *Project Manager's* notification. The *Project Manager* reviews the records provided, and within four weeks:
- accepts that part of Defined Cost as correct; or
 - notifies the *Contractor* of the correct assessment of that part of Defined Cost.

If the *Project Manager* does not notify a decision on that part of Defined Cost within the time stated, the *Contractor's* assessment is treated as correct.

Payment	51	The Project Manager certifies a payment within one week of each assessment date. The
	51.1	The Project Manager's certificate includes details of how the amount due has been assessed. 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 <i>Contractor</i> to the <i>Client</i> if the change reduces the amount due. Other payments are made by the <i>Client</i> to the <i>Contractor</i> . Payments are in the <i>currency of the contract</i> unless otherwise stated in the contract.
	51.2	Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the <i>Project Manager</i> 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 <i>Supervisor</i>; or • following a decision of the <i>Adjudicator</i> or the <i>tribunal</i>, or a recommendation of the Dispute Avoidance Board, 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 <i>interest rate</i> and is compounded annually.
	51.5	Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.

Defined Cost	52	
	52.1	All the <i>Contractor's</i> 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 Contract Data or the Schedule of Cost Components or other amounts at open market or competitively tendered prices with deductions for all discounts, rebates, reverse payments and taxes which can be obtained or recovered (including those that are related specifically to the works and those that are part of a wider purchasing or framework arrangement with the Contractor or an Affiliate).
	52.2	The <i>Contractor</i> operates on an Open Book basis in relation to claims for payment of Defined Cost. Without limitation to the foregoing, the <i>Contractor</i> keeps the following records: • accounts of payments under the contract; • proof that the payments have been made; • communications about and assessments of compensation events under subcontracts; and • other records as stated in the Scope, for a period of twelve (12) years after Completion.
	52.3	Unless the <i>Project Manager</i> agrees otherwise, the <i>Contractor</i> ensures that each Key-Subcontractor operates on an Open Book basis and keeps records of a similar nature to those that the <i>Contractor</i> is required to keep in relation to contractors or suppliers it has engaged.
	52.4	The <i>Contractor</i> allows the <i>Project Manager</i> to inspect any time within working hours the accounts and records which: • the <i>Contractor</i>;

- any Subcontractor; and
 - any Subcontractor's subcontractor,
- is required to keep.

Final assessment	53	
	53.1	The <i>Project Manager</i> makes an assessment of the final amount due and certifies a final payment, if any is due, no later than: • four weeks after the <i>Supervisor</i> issues the Defects Certificate; or • thirteen weeks after the <i>Project Manager</i> issues a termination certificate. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed. The final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.
	53.2	If the <i>Project Manager</i> does not make this assessment within the time allowed, the <i>Contractor</i> may issue to the <i>Client</i> an assessment of the final amount due, giving details of how the final amount due has been assessed. If the <i>Client</i> agrees with this assessment, a final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.
	53.3	An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions. If the contract includes Option W1, a Party: • refers a dispute about the assessment of the final amount due to the <i>Senior Representatives</i> within four weeks of the assessment being issued; • refers any issues not agreed by the <i>Senior Representatives</i> to the <i>Adjudicator</i> within three weeks of the list of the issues not agreed being produced or when it should have been produced; and • refers to the <i>tribunal</i> its dissatisfaction with a decision of the <i>Adjudicator</i> as to the final assessment of the amount due within four weeks of the decision being made. If the contract includes Option W2, a Party: • refers a dispute about the assessment of the final amount due to the <i>Senior Representatives</i> or to the <i>Adjudicator</i> within four weeks of the assessment being issued; • refers any issues referred to but not agreed by the <i>Senior Representatives</i> to the <i>Adjudicator</i> within three weeks of the list of issues not agreed being produced or when it should have been produced; and • refers to the <i>tribunal</i> its dissatisfaction with a decision of the <i>Adjudicator</i> as to the final assessment of the amount due within four weeks of the decision being made. If the contract includes Option W3, a Party: • refers a dispute about the assessment of the final amount due to the Dispute Avoidance Board; and • refers to the <i>tribunal</i> its dissatisfaction with the recommendation of the Dispute Avoidance Board within four weeks of the recommendation being made.
	53.4	The assessment of the final amount due is changed to include: • any agreement the Parties reach; and • a decision of the <i>Adjudicator</i> or recommendation of the Dispute Avoidance Board which has not been referred to the <i>tribunal</i> within four weeks of that decision or recommendation. A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.
The Contractor's share	54	
	54.1	The <i>Project Manager</i> assesses the <i>Contractor's</i> share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the <i>share ranges</i>. The limits of a <i>share range</i> are the Price for Work Done to Date divided by the total of the Prices, expressed as a

		percentage. The <i>Contractor's</i> share equals the sum of the products of the increment within each <i>share range</i> and the corresponding <i>Contractor's share percentage</i> .
	54.2	If the Price for Work Done to Date is less than the total of the Prices, the <i>Contractor</i> is paid its share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the <i>Contractor</i> pays its share of the excess.
	54.3	The <i>Project Manager</i> makes a preliminary assessment of the <i>Contractor's</i> share at Completion of the whole of the <i>works</i> using forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the whole of the <i>works</i> .
	54.4	The <i>Project Manager</i> makes a final assessment of the <i>Contractor's</i> share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.
The Activity Schedule	55	
	55.1	Information in the Activity Schedule is not Scope or Site Information.
The Price List	56	
	56.1	The Parties will use the Price List to inform the build-up of the Prices for the Stage Two <i>works</i> .
	56.2	Rates and prices included in the Price List may be adjusted in accordance with the provisions of Secondary Option X1 (Price adjustment for inflation).

6. COMPENSATION EVENTS

Compensation events 60
60.1

The following events are compensation events.

- (1) The *Project Manager* gives an instruction changing the Scope except:
 - a change made in order to accept a Defect on this contract or the Lot Contract;
 - a change to the Scope provided by the *Contractor* which is made;
 - at the *Contractor's* request (including in accordance with clause 16); or
 - in order to comply with:
 - the Scope provided by the *Client*; or
 - applicable law (except to the extent that X2 applies).
- (2) The *Client* does not allow access to and use of each part of the Site by the date provided in clause 33.1, provided that where the *Client* complies with the Access Regime and/or any other express right stated in the contract this shall not be deemed to be a compensation event.
- (3) The *Client* does not provide something which it is to provide by the date shown on the Accepted Programme.
- (4) The *Project Manager* gives an instruction to stop or not to start any work to change a Key Date.
- (5) The *Client* or Others:
 - do not work within the times shown on the Accepted Programme;
 - do not work within the conditions stated in the Scope; and/or
 - carry out work on the Site that is not stated in the Scope.
- (6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by the contract.
- (7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.
- (8) The *Project Manager* or the *Supervisor* changes a decision which either has previously communicated to the *Contractor*.
- (9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in the contract.
- (10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of carrying out a test or inspection or of doing work obstructing a required test or inspection.
- (11) A test or inspection done by the *Supervisor* causes unnecessary delay.
- (12) The *Contractor* encounters physical conditions which:
 - are within the Site;
 - are not weather conditions; and
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

- (13) A *weather measurement* is recorded:
 - within a calendar month;
 - before the Completion Date for the whole of the *works*; and

- at the place stated in the Contract Data,

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in ten years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.

(14) An event which is a *Client's* liability stated in these *conditions of contract*.

(15) The *Project Manager* certifies take over of a part of the *works* before both Completion and the Completion Date.

(16) The *Client* does not provide materials, facilities and samples for tests and inspections as stated in the Scope.

(17) The *Project Manager* notifies the *Contractor* of a correction to an assumption which the *Project Manager* stated about a compensation event.

(18) A breach of contract by the *Client* which is not one of the other compensation events in the contract.

(19) An event which:

- stops the *Contractor* completing the whole of the *works*; or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

and which:

- neither Party could prevent;
- an experienced contractor would have judged at the applicable *base date* to have such a small chance of occurring that it would have been unreasonable to have allowed for it; and
- is not one of the other compensation events stated in the contract.

(20) The *Project Manager* notifies the *Contractor* that a quotation for a proposed instruction is not accepted.

(21) Additional compensation events stated in Contract Data part one.

(22) Loss or damage occasioned by a Specified Peril at any Working Area.

60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account:

- the Site Information;
- publicly available information referred to in the Site Information;
- information obtainable from a visual inspection of the Site; and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

60.3 If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

**Notifying
compensation
events**

61

61.1

For a compensation event which arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision, the *Project Manager* notifies the *Contractor* of the compensation event at the time of that communication.

61.2

The *Project Manager* includes in the notification of a compensation event an instruction to the *Contractor* to submit quotations unless:

- save in relation to an event arising under 60.1(22), the event arises from a fault of the *Contractor* on this contract or the Lot Contract; or
- the event has no effect upon Defined Cost, Completion or meeting a Key Date;
- the event arises from an act, omission or default of the Lot Contractor and/or the Lot Contractor Supply Chain including without limitation the events identified under clause 60.1(5);

- the event arises from an event under the Lot Contract which is not a compensation event under that contract;
- 61.3 The *Contractor* notifies the *Project Manager* of an event which has happened or which is expected to happen as a compensation event if:
- the *Contractor* believes that the event is a compensation event; and
 - the *Project Manager* has not notified the event to the *Contractor* as a compensation event.
- If the *Contractor* does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices, the Completion Date or a Key Date are not changed unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision.
- 61.4 The *Project Manager* replies to the *Contractor's* notification of a compensation event within:
- one week after the *Contractor's* notification; or
 - a longer period to which the *Contractor* has agreed.
- If the *Project Manager* decides that an event:
- save in relation to an event arising under 60.1(22), arises wholly or partly from a fault of the *Contractor* on this contract, which shall include any failure by the *Contractor* to:
 - submit a programme capable of acceptance in accordance with the requirements of this contract;
 - work in accordance with the Access Regime;
 - the event arises from an act, omission or default of the Lot Contractor and/or the Lot Contractor Supply Chain including without limitation the events identified under clause 60.1(5);
 - the event arises from an event under the Lot Contract which is not a compensation event under that contract;
 - the event relates to an event notified or should have been notified under the Lot Contract whether as an early warning or otherwise;
 - has not happened and is not expected to happen;
 - has not been notified within the timescales set out in these *conditions of contract*;
 - has no effect upon Defined Cost, Completion or meeting a Key Date; or
 - is not one of the compensation events stated in the contract,
- the *Project Manager* notifies the *Contractor* that the Prices, the Fee, the Completion Date and the Key Dates are not to be changed (provided that, where the compensation event arises partly from a fault of the *Contractor*, the Prices, the Completion Date and the Key Dates are changed only to the extent that the fault is not the *Contractor's*) and states the reasons in the notification. Otherwise, the *Project Manager* notifies the *Contractor* that the event is a compensation event and includes in the notification an instruction to the *Contractor* to submit quotations.
- If the *Project Manager* fails to reply to the *Contractor's* notification of a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.
- 61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the *Project Manager* states this in the instruction to the *Contractor* to submit quotations.
- 61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, the *Project Manager* states assumptions about the compensation event or its effects in the instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.
- 61.7 A compensation event is not notified by the *Project Manager* or the *Contractor* after the issue of the Defects Certificate.

- 61.8 The *Contractor* notifies the *Project Manager* within two weeks of being instructed to submit a quotation for a compensation event if it considers the *Project Manager* should have made an assumption that it has not made or should not have made an assumption that it has made.

**Quotations for
compensation
events**

- 62
- 62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which it considers practicable.
- 62.2 Quotations for a compensation event comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of the assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in the quotation.
- 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. The reply is:
- a notification of acceptance of the quotation;
 - an instruction to submit a revised quotation; or
 - that the *Project Manager* will be making the assessment.
- 62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining the reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.
- 62.5 The *Project Manager* extends the time allowed for:
- the *Contractor* to submit quotations for a compensation event; or
 - the *Project Manager* to reply to a quotation,
- if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* informs the *Contractor* of the extension which has been agreed.
- 62.6 If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Project Manager* of the quotation.

**Assessing
compensation
events**

- 63
- 63.1 The change to the Prices is assessed as the effect of the compensation event upon:
- the actual Defined Cost of the work done by the dividing date;
 - the forecast Defined Cost of the work not done by the dividing date; and
 - the resulting Fee.
- For a compensation event that arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision, the dividing date is the date of that communication.
- For other compensation events, the dividing date is the date of the notification of the compensation event.
- 63.2 The *Project Manager* and the *Contractor* may agree rates or lump sums to assess the change to the Prices.
- 63.3 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*.
- 63.4 If the effect of a compensation event is to reduce the total Defined Cost and the event is:

- a change to the Scope other than a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted; or
 - a correction to an assumption stated by the *Project Manager* for assessing an earlier compensation event,
- the Prices are reduced.
- 63.5 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.
- A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.
- The assessment takes into account:
- any delay caused by the compensation event already in the Accepted Programme; and
 - events which have happened between the date of the Accepted Programme and the dividing date.
- 63.6 The rights of the *Client* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.
- 63.7 If the *Project Manager* has stated in the instruction to submit quotations that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the compensation event is assessed as if the *Contractor* had given the early warning.
- 63.8 The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.
- 63.9 The assessment of the effect of a compensation event is based upon the assumptions that:
- the *Contractor* reacts competently and promptly to the event, whether under this contract or the Lot Contract (where applicable); and
 - that any Defined Cost and time due to the event are reasonably incurred.
- 63.10 A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Scope.
- 63.11 If a change to the Scope makes the description of the Condition for a Key Date incorrect or of any pre-condition to be satisfied by the Completion Date, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.
- 63.12 **If the effect of a compensation event is to reduce the total Defined Cost and the event is a change to the Scope provided by the *Client*, which the *Contractor* proposed and the *Project Manager* accepted, the Prices are not reduced.**
- 63.13 **Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.**
- 63.14 For Stage One, if, when assessing a compensation event, the People Rates do not include a rate for a category of person required, the *Project Manager* and *Contractor* may agree a new rate. If they do not agree the *Project Manager* assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person.
- 63.15 An event relating to clause 60.1(22) does not change the Prices.

		• if the <i>Contractor</i> has not submitted the quotation and details of its assessment within the time allowed; • if the <i>Project Manager</i> decides that the <i>Contractor</i> has not assessed the compensation event correctly in the quotation and has not instructed the <i>Contractor</i> to submit a revised quotation; • if, when the <i>Contractor</i> submits quotations for the compensation event, it has not submitted a programme or alterations to a programme which the contract requires it to submit; and/or • if, when the <i>Contractor</i> submits quotations for the compensation event, the <i>Project Manager</i> has not accepted the <i>Contractor's</i> latest programme for one of the reasons stated in the contract.
	64.2	The <i>Project Manager</i> assesses the programme for the remaining work and uses it in the assessment of a compensation event if: • there is no Accepted Programme; • the <i>Contractor</i> has not submitted a programme or alterations to a programme for acceptance as required by the contract; or • the <i>Project Manager</i> has not accepted the <i>Contractor's</i> latest programme for one of the reasons stated in the contract.
	64.3	The <i>Project Manager</i> notifies the <i>Contractor</i> of the assessment of a compensation event and gives details of the assessment within the period allowed for the <i>Contractor's</i> submission of its quotation for the same compensation event. This period starts when the need for the <i>Project Manager's</i> assessment becomes apparent.
	64.4	If the <i>Project Manager</i> does not assess a compensation event within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the <i>Contractor</i> submitted more than one quotation for the compensation event, the notification states which quotation the <i>Contractor</i> proposes is to be used. If the failure continues for a further two weeks after the <i>Contractor's</i> notification it is treated as acceptance by the <i>Project Manager</i> of the quotation.
Proposed instructions	65	
	65.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to submit a quotation for a proposed instruction. The <i>Project Manager</i> states in the instruction the date by which the proposed instruction may be given. The <i>Contractor</i> does not put a proposed instruction into effect.
	65.2	The <i>Contractor</i> submits quotations for a proposed instruction within three weeks of being instructed to do so by the <i>Project Manager</i>. The quotation is assessed as a compensation event. The <i>Project Manager</i> replies to the <i>Contractor's</i> quotation by the date when the proposed instruction may be given. The reply is: • an instruction to submit a revised quotation including the reasons for doing so; • the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation; or • a notification that the quotation is not accepted. If the <i>Project Manager</i> does not reply to the quotation within the time allowed, the quotation is not accepted.
	65.3	If the quotation is not accepted, the <i>Project Manager</i> may issue the instruction, notify the instruction as a compensation event and instruct the <i>Contractor</i> to submit a quotation.
Implementing compensation events	66	
	66.1	A compensation event is implemented when: • the <i>Project Manager</i> notifies acceptance of the <i>Contractor's</i> quotation; or • the <i>Project Manager</i> notifies the <i>Contractor</i> of an assessment made by the <i>Project Manager</i>; or • a <i>Contractor's</i> quotation is treated as having been accepted by the <i>Project Manager</i>.
	66.2	When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.

- 66.3 The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract*.

7. TITLE

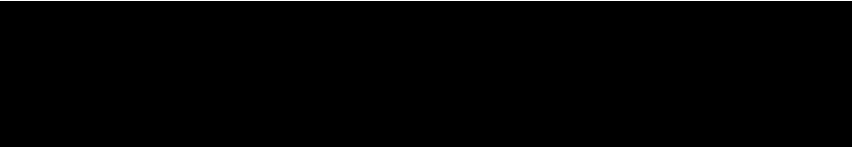
The <i>Client's</i> title to Plant and Materials	70	
	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which are outside the Working Areas passes to the <i>Client</i> if the <i>Supervisor</i> has marked them as for the contract.
	70.2	The <i>Contractor</i> ensures that title to Plant and Materials passes to the <i>Client</i> if, and without it being necessary to perform any formalities or do anything for title to so pass: • at the time they are delivered to the Working Areas; or • upon payment for them, whichever is earlier. The title to Plant and Materials passes back to the <i>Contractor</i> if they are removed from the Working Areas with the <i>Project Manager's</i> permission, unless the Plant and Materials have been paid for by the <i>Client</i>, in which case title remains with the <i>Client</i>.
	70.3	No payment is made to the <i>Contractor</i> for any Plant and Materials which are outside the Working Areas unless they are within the UK or a communication from the <i>Project Manager</i> states is a permitted country for the purposes of this clause 70.
	70.4	As a pre-condition to payment in accordance with this clause 70: • for any Exceptional Equipment, Plant and Materials outside the Working Areas (including any pre-ordered Exceptional Equipment, Plant and Materials) and listed in the Contract Data or agreed by the <i>Project Manager</i>: – where the value of each pre-ordered payment for such Exceptional Equipment, Plant and Materials exceeds [REDACTED] the <i>Contractor</i> provides a bond in favour of the <i>Client</i> in accordance with the clause X14; and – if applicable, from the date on which the relevant Plant and Materials are manufactured or delivered, signs, and procures that the relevant Subcontractor signs, a vesting agreement in such form as is reasonably required by the <i>Client</i> in respect of such Plant and Materials; or • for any Plant and Materials within the Working Areas, the <i>Contractor</i> demonstrates to the reasonable satisfaction of the <i>Project Manager</i> (including demonstrating that any retention of title clause pertaining to the Plant and Materials will not inhibit the passing of title) that title to such Plant and Materials has passed to the <i>Client</i>.
	70.5	Loss or damage to Equipment, Plant and Materials is at the <i>Contractor's</i> risk whether or not title has passed to the <i>Client</i> , unless this contract expressly states that the loss or damage is the <i>Client's</i> risk.
Marking Equipment, Plant and Materials outside the Working Areas	71	
	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if: • the contract identifies them for payment; and • the <i>Contractor</i> has prepared them for marking as the Scope requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment (except Equipment where title in the same has passed to the <i>Client</i>) from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> informs the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.

- 73.2 The *Contractor* has title to materials from excavation and demolition unless the Scope states otherwise.

The <i>Contractor's</i> use of material	74	74.1	The <i>Contractor</i> has the right to use material provided by the <i>Client</i> only to Provide the Works. The <i>Contractor</i> may make this right available to a Subcontractor.
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8. LIABILITIES AND INSURANCE

<i>Client's</i> liabilities	80	80.1	The following are <i>Client's</i> risks: • Claims and proceedings from Others and compensation and costs payable to Others which are due to: – use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i> but excluding any use or occupation which is not permitted by the contract and/or due to any negligence, default, breach of statutory duty or breach of contract by the <i>Contractor</i> or its actionable nuisance or trespass and such exclusion shall be deemed to be a <i>Contractor's</i> risk for the purpose of this contract; or – negligence, breach of statutory duty or interference with any legal right by the <i>Client</i> or by any person employed by or contracted to it except the <i>Contractor</i>. • A fault of the <i>Client</i> or any person employed by or contracted to it, except the <i>Contractor</i> and the Lot Contractor. • Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Client</i>, or by Others on the <i>Client's</i> behalf, until the <i>Contractor</i> has received and accepted them. • Loss of or damage to the <i>works</i>, Plant and Materials due to: – war, civil war, rebellion, revolution, insurrection, military or usurped power; – strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees; or – radioactive contamination. • Loss of or damage to the parts of the <i>works</i> taken over by the <i>Client</i>, except loss or damage occurring before the issue of the Defects Certificate which is due to: – a Defect which existed at take over; – an event occurring before take over which was not itself a <i>Client's</i> liability; or – the activities of the <i>Contractor</i> on the Site after take over. • Loss of or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Client</i> after a termination, except loss or damage due to the activities of the <i>Contractor</i> on the Site after the termination. • Loss of or damage to property owned or occupied by the <i>Client</i> other than the <i>works</i>, unless the loss or damage arises from or in connection with the <i>Contractor</i> Providing the Works. • Additional <i>Client's</i> risks stated in the Contract Data.
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<i>Contractor's</i> liabilities	81	81.1	From the Contract Date the following are the <i>Contractor's</i> risks, unless they are stated as being <i>Client's</i> risks: • Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the <i>Contractor</i> Providing the Works; • Loss of or damage to the <i>works</i>, Plant and Materials and Equipment; • death of or injury to a person; • loss of or damage to property (other than the <i>works</i>, Plant and Materials); •  • liability arising from fraud, fraudulent misrepresentation, abandonment, Wilful Default or a Prohibited Act;
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		• fines or penalties incurred for failure by the <i>Contractor</i> to comply with or discharge any applicable law or, any Consent; and/or • insurance deductibles under an insurance policy arising from an event which is a <i>Contractor</i> risk, in each case arising from or in connection with the <i>Contractor</i> Providing the Works, remedying a Defect and/or the <i>Contractor's</i> fault or omission or any person employed by or contracted to it.
Indemnity	82	Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at their risk.
	82.1	
	82.2	Not used.
	82.3	The costs payable under clause 82.1 are subject to both Parties using their duty to mitigate, and such costs being reasonably foreseeable established and ascertained.
	82.4	Any cost which the <i>Client</i> has paid or will pay as a result of an event for which the <i>Contractor</i> is liable is paid by the <i>Contractor</i> .
	82.5	Any cost which the <i>Contractor</i> has paid or will pay to Others as a result of an event for which the <i>Client</i> is liable is paid by the <i>Client</i> .
	82.6	The liability of each Party to indemnify the other is reduced if an event for which the other Party was liable contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.
	82.7	Each Party notifies the other Party as soon as reasonably practicable after its receipt of any formal written claim and: • does not settle or compromise any claim without the prior agreement of the other Party (such agreement not to be unreasonably withheld or delayed); and • takes reasonable steps to mitigate any loss or damage, in respect of which each Party is entitled to be indemnified by the other Party.

Insurance cover

- 83
- 83.1 The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Client* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data.
- 83.3 Except in respect of professional indemnity insurances, the insurances in the Insurance Table are in the joint names of the Parties or shall have an indemnity to principals clause. The insurances provide cover for events which are the *Contractor's* liability from the *starting date* until the Defects Certificate or a termination certificate has been issued.

INSURANCE TABLE		
INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	
	Stage One	Stage Two
Loss of or damage to the works, Plant and Materials		
Loss of or damage to Equipment		
Loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor</i> Providing the Works		
Death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with the contract		
Professional Indemnity Insurance		

Insurance policies

- 84
- 84.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. The *Project Manager* accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.

- 84.2 Insurance policies (except Professional Indemnity) include a waiver by the insurers of their subrogation rights against the Parties and the directors and other employees of every insured except where there is fraud.
- 84.3 The Parties comply with the terms and conditions of the insurance policies to which they are a party.
- 84.4 The *Contractor* provides the insurances in the Insurance Table from the *starting date* until the end of the period stated in the Contract Data subject to being available at commercially reasonable rates and terms.
- 84.5 For the purposes of clause 84.4, any increased or additional premium or special terms required by insurers by reason of the *Contractor's* own claim record or other acts or omissions particular to the *Contractor* shall be deemed to be within commercially reasonable rates and terms.
- 84.6 The *Contractor* shall comply with all conditions and obligations of such insurance policy and shall immediately inform the *Client* if such insurance ceases to be maintained or ceases to be available on commercially reasonable rates and terms. The *Client* and the *Contractor* shall discuss the best means of protecting the *Client's* position and the *Contractor* shall if requested by the *Client* take out such insurance with such a limit of indemnity as is available in the market on commercially reasonable rates and terms.

**If the
Contractor
does not insure**

- 85
85.1 The *Client* may insure an event or liability which the contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Client* is paid by the *Contractor* save where the insurance is no longer available at commercially reasonable rates and terms.

**Insurance by
the *Client***

- 86
86.1 The *Project Manager* submits certificates for insurance provided by the *Client* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
- 86.2 The *Contractor's* acceptance of an insurance certificate provided by the *Client* does not change the responsibility of the *Client* to provide the insurances stated in the Contract Data.
- 86.3 The *Contractor* may insure an event or liability which the contract requires the *Client* to insure if the *Client* does not submit a required certificate. The cost of this insurance to the *Contractor* is paid by the *Client*.

9. TERMINATION

Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works it notifies the other Party giving details of the reason for terminating. The *Client* issues a termination certificate promptly if the reason complies with the contract.
- 90.2 A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE			
TERMINATING PARTY	REASON	PROCEDURE	AMOUNT DUE
The <i>Client</i>	R1–R15, R18 and R22– R25		
	R26		
	R17 or R20		
	R21		
The <i>Contractor</i>	R1–R10B, R16, R17, R19 or R20		

- 90.3 The procedures for termination are implemented immediately after the *Client* has issued a termination certificate. R26
If the *Client* terminates for one of reasons R1 to R15, R18 and R22 –R25 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise.
- 90.4 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has:
 - presented an application for bankruptcy (R1);
 - had a bankruptcy order made against it (R2);
 - had a receiver appointed over its assets (R3); or
 - made an arrangement with its creditors (R4).
 - If the other Party is a company or partnership and has:
 - had a winding-up order made against it (R5);
 - had a provisional liquidator appointed to it (R6);
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7);
 - had an administration order made against it or had an administrator appointed over it (R8);
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9); or
 - made an arrangement with its creditors (R10).
 - provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or re construction (R10A); or
 - applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency

- 91.2 The *Client* may terminate if the *Project Manager* has notified that the *Contractor* has not put one of the following defaults right within four weeks of the date when the *Project Manager* notified the *Contractor* of the default.
- substantially failed to comply with its obligations (R11).
 - not provided a bond or guarantee which the contract requires (R12).
 - appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).
- 91.3 The *Client* may terminate if the *Project Manager* has notified that the *Contractor* has not stopped one of the following defaults within four weeks of the date when the *Project Manager* notified the *Contractor* of the default.
- substantially hindered the *Client* or Others (R14).
 - substantially broken a health or safety or environmental requirement of this contract or regulation (R15).
- 91.4 The *Contractor* may terminate if the *Client* has not paid an amount due under the contract within thirteen weeks of the date that the *Contractor* should have been paid (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of the contract (R17).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within thirteen weeks:
- the *Client* may terminate if the instruction was due to a default by the *Contractor* (R18);
 - the *Contractor* may terminate if the instruction was due to a default by the *Client* (R19); and
 - either Party may terminate if the instruction was due to any other reason (R20).
- 91.7 The *Client* may terminate if an event occurs which:
- stops the *Contractor* completing the whole of the *works*; or
 - stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *works* by more than thirteen weeks,
- and which:
- neither Party could prevent; and
 - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it (R21).
- 91.8 The *Client* may terminate if the *Contractor* does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Contractor*:
- was not and should not have been aware of the Corrupt Act; or
 - informed the *Project Manager* of the Corrupt Act and took action to stop it as soon as the *Contractor* became aware of it (R22).
- 91.9 The *Client* may terminate if one of the mandatory grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 (R23);
- 91.10 The *Client* may terminate if the liability of the *Contractor* reaches or is forecast to reach the amount by which such liability is limited under this contract (R24).

- 91.11 The *Client* may terminate in the event of a conflict of interest which has not been resolved to the *Client's* satisfaction in accordance with the provisions of the *Client's* conflict of interest policy included in the Scope (R25).
- 91.12 The *Client* may terminate if this contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to Regulation 72 of the Public Contracts Regulation 2015). If the modification or infringement was due to a default by the *Contractor*, this is treated as a termination because of a failure of the *Contractor* to comply with its obligations (R11), otherwise this is treated as (R26);

Procedures on termination

- 92
- 92.1 On termination, the *Client* may complete the *works* and may use any Plant and Materials to which it has title (P1).
- 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.
- P2 The *Client* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of the contract to the *Client*.
- P3 The *Client* may use any Equipment to which the *Contractor* has title to complete the *works*. The *Contractor* promptly removes the Equipment from Site when the *Project Manager* informs the *Contractor* that the *Client* no longer requires it to complete the *works*.
- P4 The *Contractor* leaves the Working Areas and removes the Equipment.
- P5 The *Contractor* complies with the Exit Plan.
-

Payment on termination

- 93
- 93.1 The amount due on termination includes (A1):
- an amount due assessed as for normal payments;
 - the Defined Cost for Plant and Materials:
 - within the Working Areas; or
 - to which the *Client* has title and of which the *Contractor* has to accept delivery,
 - other Defined Cost reasonably incurred in expectation of completing the whole of the *works*;
 - any amounts retained by the *Client*; and
 - a deduction of any un-repaid balance of an advanced payment.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 The forecast Defined Cost of removing Equipment and of making safe and protecting the *works* and of making safe the Site or, where the *Client* uses the Equipment to complete the *works* under P3, the Defined Cost for Equipment used by the *Client*.
- A3 A deduction of the forecast of:
- the additional cost to the *Client* of completing the whole of the *works*; and
 - any Direct Losses suffered or incurred by the *Client* arising as a consequence of the termination of the *Contractor's* obligation to Provide the Works (including payments of reasonable and direct additional amounts to *Contractors* in carrying out work on the same Project).
- A4 The costs reasonably incurred by the *Contractor* in expectation of completing the *works* (including breakage costs in subcontracts, but not loss of profit for any Subcontractor or any subcontractor at any tier, where the *Project Manager* has accepted the terms of those subcontracts), if and to the extent that
- following receipt of a termination certificate, the *Contractor* has notified those costs to the *Project Manager* within twenty eight (28) days or such other period as the Parties agree (acting reasonably) of receipt such termination certificate:

- those costs are not included in A1 or A2; and
- those costs cannot be mitigated or avoided,

but no breakage costs will be payable in respect of any subcontract or other contract which is novated to the *Client* or Others under P2 or any such subcontract or contract where the relevant Subcontractor has entered into a new contract with the *Client* or Others to complete the relevant works.

- 93.3 If there is a termination, the *Project Manager* assesses the *Contractor's* share after certifying termination. The assessment uses as the Price for Work Done to Date the total of the Defined Cost which the *Contractor* has paid and which it is committed to pay for work done before termination, and uses as the total of the Prices:
- the lump sum price for each activity which has been completed; and
 - a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed.
- 93.4 The *Project Manager's* assessment of the *Contractor's* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess.

Resolving and Avoiding Disputes

OPTION W1

Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply.

Resolving disputes

W1
W1.1

- (1) A dispute arising under or in connection with the contract is referred to the *Senior Representatives* in accordance with the Dispute Reference Table. If the dispute is not resolved by the *Senior Representatives*, it is referred to and decided by the *Adjudicator*. A Party may replace a *Senior Representative* after notifying the other Party of the name of the replacement.
- (2) The Party referring a dispute notifies the *Senior Representatives*, the other Party and the *Project Manager* of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.
- (3) The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of no more than three weeks. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Project Manager* and the *Contractor* put into effect the issues agreed.
- (4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the *Adjudicator* or the *tribunal*.

DISPUTE REFERENCE TABLE		
DISPUTE ABOUT	WHICH PARTY MAY REFER IT TO THE SENIOR REPRESENTATIVES?	WHEN MAY IT BE REFERRED TO THE SENIOR REPRESENTATIVES?
An action or inaction of the <i>Project Manager</i> or the <i>Supervisor</i>	Either Party	Not more than four weeks after the Party becomes aware of the action or inaction
A programme, compensation event or quotation for a compensation event which is treated as having been accepted	The <i>Client</i>	Not more than four weeks after it was treated as accepted
An assessment of Defined Cost which is treated as correct	Either Party	Not more than four weeks after the assessment was treated as correct
Any other matter	Either Party	When the dispute arises

The *Adjudicator* W1.2

- (1) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*.
- (2) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.
- (3) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not

chosen an adjudicator, either Party may ask the *Adjudicator nominating body* to choose one. The *Adjudicator nominating body* chooses an adjudicator within seven days of the request. The chosen adjudicator becomes the *Adjudicator*.

- (4) A replacement *Adjudicator* has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The *Adjudicator* deals with an undecided dispute as if it had been referred on the date of appointment as replacement *Adjudicator*.
- (5) The *Adjudicator* and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

The adjudication

W1.3

- (1) A Party disputing any issue not agreed by the *Senior Representatives* issues a notice of adjudication to the other Party and the *Project Manager* within two weeks of the production of the list of agreed and not agreed issues, or when it should have been produced. The dispute is referred to the *Adjudicator* within one week of the notice of adjudication.
- (2) The times for notifying and referring a dispute may be extended by the *Project Manager* if the *Contractor* and the *Project Manager* agree to the extension before the notice or referral is due. The *Project Manager* informs the *Contractor* of the extension that has been agreed. If a disputed matter is not notified and referred within the times set out in the contract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.
- (3) The Party referring the dispute to the *Adjudicator* includes with its referral information to be considered by the *Adjudicator*. Any more information from a Party to be considered by the *Adjudicator* is provided within four weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.
- (4) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with the contract and if the subcontract allows, the *Contractor* may refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.
- (5) The *Adjudicator* may:
 - review and revise any action or inaction of the *Project Manager* or *Supervisor* related to the dispute and alter a matter which has been treated as accepted or correct;
 - take the initiative in ascertaining the facts and the law related to the dispute;
 - instruct a Party to provide further information related to the dispute within a stated time; and
 - instruct a Party to take any other action which is considered necessary for the *Adjudicator* to reach a decision and to do so within a stated time.
- (6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
- (7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, the assessment is made in the same way as a compensation event is assessed.
- (8) The *Adjudicator* decides the dispute and informs the Parties and the *Project Manager* of the decision and reasons within four weeks of the end of the period for receiving information. This four-week period may be extended if the Parties agree.
- (9) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.
- (10) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the contract that it is dissatisfied with a decision of the *Adjudicator* and intends to refer the matter to the *tribunal*. A Party does not refer a dispute to the *Adjudicator* that is the same or substantially the same as one that has already been referred to the *Adjudicator*.

- (11) The *Adjudicator* may, within two weeks of giving the decision to the Parties, correct any clerical mistake or ambiguity.

The tribunal

W1.4

- (1) A Party does not refer any dispute under or in connection with the contract to the *tribunal* unless it has first been referred to the *Adjudicator* in accordance with the contract.
- (2) If, after being informed of the *Adjudicator's* decision, a Party is dissatisfied, that Party may notify the other Party of the matter which is disputed and state that it intends to refer the matter to the *tribunal*. The dispute is not referred to the *tribunal* unless this notification is given within four weeks of being informed of the *Adjudicator's* decision.
- (3) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, a Party may notify the other Party that it intends to refer the dispute to the *tribunal*. A Party does not refer a dispute to the *tribunal* unless this notification is given within four weeks of the date by which the *Adjudicator* should have informed the Parties of the decision.
- (4) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in the *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*.
- (5) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.
- (6) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

OPTION W2

Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies.

Resolving disputes

W2

W2.1

- (1) If the Parties agree, a dispute arising under or in connection with the contract is referred to the *Senior Representatives*. If the dispute is not resolved by the *Senior Representatives*, it is referred to and decided by the *Adjudicator*. A Party may replace a *Senior Representative* after notifying the other Party of the name of the replacement.
- (2) The Party referring a dispute notifies the *Senior Representatives*, the other Party and the *Project Manager* of the nature of the dispute it wishes to resolve. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties.
- (3) The *Senior Representatives* attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Project Manager* and the *Contractor* put into effect the issues agreed.
- (4) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before the *Adjudicator* or the *tribunal*.
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The <i>Adjudicator</i>	W2.2	(1) A dispute arising under or in connection with the contract is referred to and decided by the <i>Adjudicator</i>. A Party may refer a dispute to the <i>Adjudicator</i> at any time whether or not the dispute has been referred to the <i>Senior Representatives</i>. (2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays. (3) The Parties appoint the <i>Adjudicator</i> under the NEC Dispute Resolution Service Contract current at the <i>starting date</i>. (4) The <i>Adjudicator</i> acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator. (5) If the <i>Adjudicator</i> is not identified in the Contract Data or if the <i>Adjudicator</i> resigns or becomes unable to act: • the Parties may choose an adjudicator jointly; or • a Party may ask the <i>Adjudicator nominating body</i> to choose an adjudicator. The <i>Adjudicator nominating body</i> chooses an adjudicator within four days of the request. The chosen adjudicator becomes the <i>Adjudicator</i>. (6) A replacement <i>Adjudicator</i> has the power to decide a dispute referred to a predecessor but not decided at the time when the predecessor resigned or became unable to act. The <i>Adjudicator</i> deals with an undecided dispute as if it had been referred on the date of appointment as replacement <i>Adjudicator</i>. (7) A Party does not refer a dispute to the <i>Adjudicator</i> that is the same or substantially the same as one that has already been decided by the <i>Adjudicator</i>. (8) The <i>Adjudicator</i>, and the <i>Adjudicator's</i> employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
The adjudication	W2.3	(1) Before a Party refers a dispute to the <i>Adjudicator</i>, it gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which it wishes the <i>Adjudicator</i> to make. If the <i>Adjudicator</i> is named in the Contract Data, the Party sends a copy of the notice of adjudication to the <i>Adjudicator</i> when it is issued. Within three days of the receipt of the notice of adjudication, the <i>Adjudicator</i> informs the Parties that the <i>Adjudicator</i>: • is able to decide the dispute in accordance with the contract; or • is unable to decide the dispute and has resigned. If the <i>Adjudicator</i> does not so inform within three days of the receipt of the notice of adjudication, either Party may act as if the <i>Adjudicator</i> has resigned. (2) Within seven days of a Party giving a notice of adjudication it: • refers the dispute to the <i>Adjudicator</i>; • provides the <i>Adjudicator</i> with the information on which it relies, including any supporting documents; and • provides a copy of the information and supporting documents it has provided to the <i>Adjudicator</i> to the other Party. (3) If a matter disputed by the <i>Contractor</i> under or in connection with: • the Lot Contract; and • a subcontract is also a matter disputed under or in connection with the contract, the <i>Contractor</i> may, with the consent of the Subcontractor, • refer the applicable dispute to the <i>Adjudicator</i> at the same time as the main contract referral. The <i>Adjudicator</i> then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Lot Contractor and/or Subcontractor (as the case may be). (4) If a matter disputed under or in connection with this contract raises the same or similar issues to a related dispute between the <i>Client</i> and one of the <i>Client's</i> other contractors, the <i>Client</i> may refer the related dispute to the <i>Adjudicator</i> at the same time as the referral under this contract. The <i>Adjudicator</i> then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the <i>Client's</i> other contractor.

- (5) The *Adjudicator* decides the procedure and timetable to be followed in the adjudication. In doing so the *Adjudicator* may:
 - take the initiative in ascertaining the facts and the law related to the dispute; and
 - instruct a Party to take any other action within a stated time which is necessary to reach a decision.
- (6) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make a decision based upon the information and evidence received.
- (7) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
- (8) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, the assessment is made in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, the date on which payment of the changed amount becomes due is seven days after the date of the decision.
- (9) The *Adjudicator* decides the dispute and informs the Parties and the *Project Manager* of the decision and reasons within twenty-eight days of the dispute being referred. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties.
The *Adjudicator* may in the decision:
 - review and revise any action or inaction of the *Project Manager* or *Supervisor* related to the dispute;
 - alter a matter which has been treated as accepted or correct; and
 - allocate the *Adjudicator's* fees and expenses between the Parties.
- (10) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.
- (11) If the *Adjudicator* does not inform the Parties of the decision within the time provided by the contract, the Parties and the *Adjudicator* may agree to extend the period for making a decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.
- (12) The *Adjudicator's* decision is binding on the Parties unless and until revised by the tribunal and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the tribunal.
- (13) The *Adjudicator* may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

The tribunal

- W2.4
- (1) A Party does not refer any dispute under or in connection with the contract to the *tribunal* unless it has first been decided by the *Adjudicator* in accordance with the contract.
 - (2) If, after the *Adjudicator* makes a decision, a Party is dissatisfied, that Party may notify the other Party of the matter which is disputed and state that it intends to refer the disputed matter to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of being informed of the *Adjudicator's* decision.
 - (3) The *tribunal* settles the dispute referred to it. The *tribunal* has the power to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute (including whether an event which has been treated a compensation event is in fact a compensation event) and alter a quotation which has been treated as having been accepted. A Party is not limited in *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*.

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- (4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.
 - (5) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

OPTION W3

Used when a Dispute Avoidance Board is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply.

The Dispute Avoidance Board	W3 W3.1	• The Dispute Avoidance Board consists of one or three members as identified in the Contract Data. If the Contract Data states that the number of members is three, the third member is jointly chosen by the Parties. (1) The Parties appoint the Dispute Avoidance Board under the NEC Dispute Resolution Service Contract current at the <i>starting date</i>. (2) The Dispute Avoidance Board acts impartially. (3) If a member of the Dispute Avoidance Board is not identified in the Contract Data or if a member of the Dispute Avoidance Board is unable to act, the Parties jointly choose a new member. If the Parties have not chosen a Dispute Avoidance Board member or a replacement, either Party may ask the <i>Dispute Avoidance Board nominating body</i> to choose one. The <i>Dispute Avoidance Board nominating body</i> chooses a Dispute Avoidance Board member within seven days of the request. The chosen member becomes a member of the Dispute Avoidance Board. (4) The Dispute Avoidance Board visits the Site at the intervals stated in the Contract Data from the <i>starting date</i> until the <i>defects date</i> unless the Parties agree that a visit is not necessary. The purpose of the visit is to enable the Dispute Avoidance Board to inspect the progress of the <i>works</i> and become aware of any potential disputes. The Dispute Avoidance Board makes additional visits when requested by the Parties. (5) The agenda for the Site visit is proposed by the Parties and decided by the Dispute Avoidance Board. (6) The members of the Dispute Avoidance Board, their employees and agents are not liable to the Parties for any action or failure to take action in resolving a potential dispute unless the action or failure to take action was in bad faith.
Resolving potential disputes	W3.2	(1) The Dispute Avoidance Board assists the Parties in resolving potential disputes before they become disputes. (2) A potential dispute arising under or in connection with the contract is referred to the Dispute Avoidance Board. (3) Potential disputes are notified and referred to the Dispute Avoidance Board between two to four weeks after notification of the issue to the other Party and the <i>Project Manager</i>. (4) The Parties make available to the Dispute Avoidance Board: • copies of the contract; • progress reports; and • any other material they consider relevant to any difference which they wish the Dispute Avoidance Board to consider in advance of the visit to the Site. (5) The Dispute Avoidance Board: • visits the Site and inspects the <i>works</i>; • reviews all potential disputes and helps the Parties to settle them without the need for the dispute to be formally referred;

- prepares a note of their visit; and
 - unless the Parties have resolved the potential dispute by the end of the Site visit, provide a recommendation for resolving it.
- (6) The Dispute Avoidance Board can take the initiative in reviewing potential disputes, including asking the Parties to provide further information.

The *tribunal*

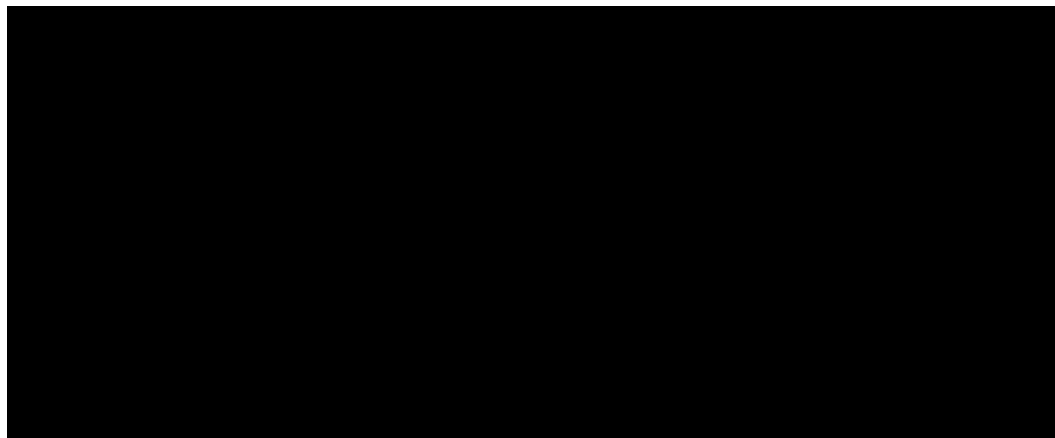
- W3.3
- (1) A Party does not refer any dispute under or in connection with the contract to the *tribunal* unless it has first been referred to the Dispute Avoidance Board as a potential dispute in accordance with the contract.
- (2) If, after the Dispute Avoidance Board makes a recommendation, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputes and state that it intends to refer it to the *tribunal*. The dispute is not referred to the *tribunal* unless this notification is given within four weeks of the provision of the Dispute Avoidance Board's recommendation.
- (3) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any recommendation of the Dispute Avoidance Board and review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in the *tribunal* proceedings to the information, evidence or arguments put to the Dispute Avoidance Board.
- (4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.
- (5) A Party does not call a member of the Dispute Avoidance Board as a witness in *tribunal* proceedings.

Secondary Option Clauses

OPTION X1: PRICE ADJUSTMENT FOR INFLATION

Defined terms	X1	
	X1.1	The Base Date Index (B) is the latest available index before the <i>base date</i>. The Latest Index (L) is the latest available index before the date of assessment of an amount due. The Price Adjustment Factor (PAF) at each date of assessment of an amount due is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.
Price Adjustment Factor	X1.2	During Stage Two, if an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the <i>works</i> is used for calculating an amount for price adjustment after that date.
Price adjustment	X1.3	During Stage Two, each time the amount due is assessed, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$.
Compensation events	X1.4	During Stage Two, the Defined Cost for compensation events is assessed using - the Defined Cost at <i>base date</i> levels for amounts calculated from rates stated in the Contract Data for people and Equipment and - the Defined Cost current at the dividing date used in assessing the compensation event, adjusted to the <i>base date</i> by dividing by one plus the PAF for the last assessment of the amount due before that dividing date, for other amounts.

Stage One
indexation



OPTION X2: CHANGES IN THE LAW

Changes in the law	X2	
	X2.1	A change in the law of the country in which the Site is located is a compensation event if it occurs after the <i>base date</i> , unless the change is a change in taxes on the <i>Contractor's</i> net income or profit or in taxes imposed on its business rather than the performance of its obligations under this contract. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.
	X2.2	A change is treated as occurring before the <i>base date</i> if it is stated in a statute or statutory instrument before the <i>base date</i> but comes into force after the <i>base date</i> .

- X2.3 A compensation event for a change in law does not arise if the Scope states that the *Contractor* should make an allowance in the Accepted Programme and the Prices for an anticipated change in law that comes into effect. A compensation event arises if the impact of the change in law exceeds the *Contractor's* allowances.

OPTION X4: PARENT COMPANY GUARANTEE

- Parent company guarantee** X4
- X4.1 If the *Contractor* is a subsidiary of another company and if the *Client* so requests, the *Contractor* gives to the *Client* a guarantee of the *Contractor's* performance from the Guarantor, in the form set out in Annex 4 (Form of Parent Company Guarantee). If the guarantee was not given by the Contract Date, it is given to the *Client* within six weeks of the Contract Date.
- X4.2 In each case, at the same time as giving the guarantee, the *Contractor* gives to the *Client*, in a form acceptable to the *Project Manager*, opinion letters evidencing the authority of each guarantor to give the relevant guarantee unless the *Project Manager* has instructed or agreed that no opinion letter is required. No opinion letter is required where the parent company is a company registered in England and Wales.

OPTION X5: SECTIONAL COMPLETION

- Sectional Completion** X5
- X5.1 In these *conditions of contract*, unless stated as the whole of the *works*, each reference and clause relevant to:
- the *works*;
 - Completion; and
 - Completion Date
- applies, as the case may be, to either the whole of the *works* or any *section* of the *works*.

OPTION X6: BONUS FOR EARLY COMPLETION

- Bonus for early Completion** X6
- X6.1 ~~The *Contractor* is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of:~~
- ~~• Completion; and~~
 - ~~• the date on which the *Client* takes over the *works*~~
- ~~until the Completion Date.~~

OPTION X7: DELAY DAMAGES

- Delay damages** X7
- X7.1 Subject to X7.4, the *Contractor* pays delay damages at the rate stated in the Contract Data for each day from the Completion Date until the earlier of:
- Completion;
 - the date on which the *Client* takes over the *works*; and
 - the date on which the *Project Manager* issues a termination certificate.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Client* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment.
- X7.3 If the *Client* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Client* of taking over the part of the *works* as a proportion of the benefit to the *Client* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.
- X7.4 [REDACTED]

OPTION X8: COLLATERAL WARRANTIES TO THE CLIENT OR OTHERS

Undertakings to the Client or Others	X8	
	X8.1	The <i>Contractor</i> gives Collateral Warranties to no more than two (2) Beneficiaries if required by the <i>Client</i> .
	X8.2	If the <i>Contractor</i> subcontracts the work stated in the Contract Data it arranges for the Key-Subcontractor to provide a <i>Subcontractor</i> Collateral Warranties to no more than two (2) Beneficiaries if required by the <i>Client</i> .
	X8.3	If the <i>Contractor</i> subcontracts the work stated in the Contract Data it arranges for the Key-Subcontractor to provide a <i>Subcontractor</i> Collateral Warranties to the <i>Client</i> .
	X8.4	The <i>Client</i> prepares the Collateral Warranties and sends them to the <i>Contractor</i> for signature. The <i>Contractor</i> signs the Collateral Warranties, or arranges for the Subcontractor to sign them, and returns them to the <i>Client</i> within three weeks.

OPTION X9: TRANSFER OF RIGHTS⁷

Transfer of rights	X9	
	X9.1	The <i>Client</i> owns the <i>Contractor's</i> rights over material prepared for the design of the works except as stated otherwise in the Scope. The <i>Contractor</i> obtains other rights for the <i>Client</i> as stated in the Scope and obtains from a Subcontractor equivalent rights for the <i>Client</i> over the material prepared by the Subcontractor. The <i>Contractor</i> provides to the <i>Client</i> the documents which transfer these rights to the <i>Client</i> .

OPTION X10: INFORMATION MODELLING⁸

Defined terms	X10	
	X10.1	(1) The Information Execution Plan is the <i>information execution plan</i> or is the latest Information Execution Plan accepted by the <i>Project Manager</i>. The latest Information Execution Plan accepted by the <i>Project Manager</i> supersedes the previous Information Execution Plan. (2) Project Information is information provided by the <i>Contractor</i> which is used to create or change the Information Model Requirements. (3) The Information Model is the electronic integration of Project Information and similar information provided by the <i>Client</i> and other Information Providers and is in the form stated in the Information Model. (4) The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model. (5) Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.
Collaboration	X10.2	The <i>Contractor</i> collaborates with other Information Providers as stated in the Information Model Requirements.
Early warning	X10.3	The <i>Contractor</i> and the <i>Project Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or use of the Information Model.
Information Execution Plan	X10.4	(1) If an Information Execution Plan is not identified in the Contract Data, the <i>Contractor</i> submits a first Information Execution Plan to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data. (2) Within two weeks of the <i>Contractor</i> submitting an Information Execution Plan for acceptance, the <i>Project Manager</i> notifies the <i>Contractor</i> of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that: it does not comply with the Information Model Requirements; or

		• it does not allow the <i>Contractor</i> to Provide the Works. If the <i>Project Manager</i> does not notify acceptance or non-acceptance within the time allowed, the <i>Contractor</i> may notify the <i>Project Manager</i> of that failure. If the failure continues for a further one week after the <i>Contractor</i>'s notification, it is treated as acceptance by the <i>Project Manager</i> of the Information Execution Plan.
		(3) The <i>Contractor</i> submits a revised Information Execution Plan to the <i>Project Manager</i> for acceptance • within the period for reply after the <i>Project Manager</i> has instructed it to; and • when the <i>Contractor</i> chooses to.
		(4) The <i>Contractor</i> provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan
Compensation events	X10.5	If the Information Execution Plan is altered by a compensation event, the <i>Contractor</i> includes the alterations to the Information Execution Plan in the quotation for the compensation event.
Use of the Information Model	X10.6	The <i>Client</i> owns the Information Model and the <i>Contractor</i> 's rights over Project Information except as stated otherwise in the Information Model Requirements. The <i>Contractor</i> obtains from a Subcontractor equivalent rights for the <i>Client</i> over information prepared by the Subcontractor. The <i>Contractor</i> provides to the <i>Client</i> the documents which transfer these rights to the <i>Client</i> .
Liability	X10.7	(1) The following are <i>Client</i>'s liabilities. • A fault in the Information Model not caused by a Defect in the Project Information. • A fault in information provided by Information Providers other than the <i>Contractor</i>. (2) The <i>Contractor</i> is not liable for a Defect in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information. (3) The <i>Contractor</i> provides insurance for claims made against it arising out of its failure to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the starting date until the end of the period stated in the Contract Data.

OPTION X11: TERMINATION BY THE CLIENT

Termination by the Client	X11	
	X11.1	The <i>Client</i> may terminate the <i>Contractor</i> 's obligation to Provide the Works for a reason not identified in the Termination Table by notifying the <i>Project Manager</i> and the <i>Contractor</i> .
	X11.2	If the <i>Client</i> terminates for a reason not identified in the Termination Table the termination procedures followed are P1, P2, P3 and P5 and the amounts due on termination are A1, A2 and A4.

OPTION X12: MULTIPARTY COLLABORATION (NOT USED WITH OPTION X20)

Defined termsX12
X12.1

- (1) Partners are those who have a contract in connection with the subject matter of the contract which includes this multiparty collaboration Option or equivalent. The *Promoter* is a Partner.
- (2) The Schedule of Partners is a list of the Partners which is in the document the Contract Data states it is in and Partners subsequently added by agreement of the Partners. It sets out the objectives of the Partners and includes targets for performance.
- (3) An Own Contract is a contract between two Partners.
- (4) The Core Group comprises the Partners selected to take decisions on behalf of the Partners.
- (5) The Schedule of Core Group Members is a list of the Partners forming the Core Group.
- (6) Partnering Information is information which specifies how the Partners collaborate and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with the contract.
- (7) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

Actions

X12.2

- (1) The Partners collaborate with each other to achieve the Promoter's objective stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.
- (2) Each Partner nominates a representative to act for it in dealings with other Partners.
- (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.
- (4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The Promoter's representative leads the Core Group unless stated otherwise in the Partnering Information.
- (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.
- (6) This Option does not create a legal partnership between Partners who are not one of the Parties in the contract.

Collaboration	X12.3	(1) The Partners collaborate as stated in the Partnering Information and in a spirit of mutual trust and co-operation.
		(2) A Partner may ask another Partner to provide information which it needs to carry out the work in its Own Contract and the other Partner provides it.
		(3) Each Partner gives an early warning to the other Partners when it becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.
		(4) The Partners use common information systems as set out in the Partnering Information.
		(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.
		(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.
		(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The <i>Contractor</i> changes its programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.
		(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.
		(9) A Partner informs the Core Group before subcontracting any work.

OPTION X13: PERFORMANCE BOND

Performance bond	X13	
	X13.1	The <i>Contractor</i> gives the <i>Client</i> a performance bond, provided by a bank or insurer which the <i>Project Manager</i> has accepted, for the amount stated in the Contract Data and in the form set out in the Scope. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the <i>Client</i> within four weeks of the Contract Date.

OPTION X14: ADVANCED PAYMENT TO THE CONTRACTOR

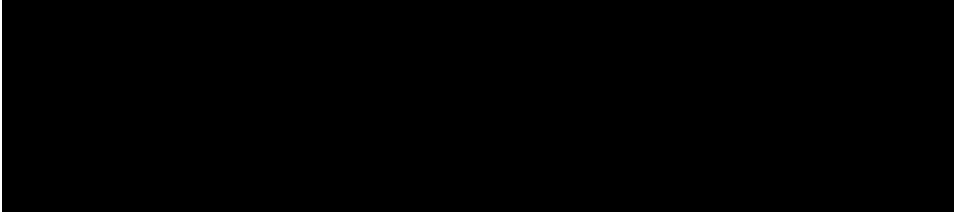
Advanced Payment to the Contractor	X14	
	X14.1	Where pursuant to clause 70.4, the <i>Client</i> requires an advanced payment bond, the advanced payment is made within four weeks of the date when the <i>Client</i> receives the advanced payment bond or, if later, the date for the <i>Client</i> to make the payment stated in the Accepted Programme.
	X14.2	Notwithstanding clause 70.4 and X14.1, the <i>Client</i> may at its absolute discretion accept alternative equivalent security in lieu of (or together with) an advanced payment bond. The terms and conditions of such alternative equivalent security must be acceptable to the <i>Client</i> in its absolute discretion.
	X14.3	The advanced payment bond is issued by a bank or insurer which the <i>Client</i> has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the <i>Contractor</i> has not repaid and is in the form set out in the Scope. Delay in making the advanced payment in accordance with the contract is a compensation event.
	X14.4	The advanced payment bond and/or alternative equivalent security remains valid until the later of:

- the date on which the relevant Plant and Materials or Exceptional Equipment to which the advanced payment bond relates have been delivered to the Working Areas; or
- the repayment in full of the advanced payment.

X14.5 Provided that the relevant Plant and Materials and/or Exceptional Equipment has been inspected by the *Project Manager*, is insured, is secure and is marked for the Project, the place where such items are stored in the United Kingdom may be accepted by the *Project Manager* as a Working Area.

OPTION X15: THE CONTRACTOR'S DESIGN

The Contractor's design

- X15
- X15.1 The *Contractor* is not liable for a Defect which arose from its design unless it failed to carry out that design using the Standard of Care.
- X15.2 If the *Contractor* corrects a Defect for which it is not liable under the contract it is a compensation event.
- X15.3 
- X15.4 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance a certificate which states that the insurance required by this clause X15 is in force. After the *defects date* and on each renewal of the insurance policy until the end of the period stated in the Contract Data for which insurance is to be maintained, the *Contractor* submits to the *Client* for acceptance a certificate which states that the insurance required by this clause is in force. The certificate is signed by the *Contractor's* insurer or insurance broker. The *Project Manager* or the *Client* accepts the policy and certificate if the insurance complies with this clause and if the insurer's commercial position is strong enough to carry the insured liability. The *Client's* acceptance of an insurance certificate provided by the *Contractor* does not change the responsibility of the *Contractor* to provide the insurance.
- X15.5 Notwithstanding anything else in this contract (including, without limitation, the Scope), to the extent permitted by applicable law, the *Contractor* shall have no greater duty, obligation or liability than to exercise the Standard of Care in respect of the *Contractor's* design obligations under this contract (including, without limitation, the Scope) and under no circumstances shall the *Contractor* be subject to any duty, obligation or liability which required that any such design shall be fit for its purpose.

OPTION X16: RETENTION

Retention

- X16
- X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of:
- Completion of the whole of the *works*; and
 - the date on which the *Client* takes over the whole of the *works*,
- the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.
- X16.2 The amount retained is halved:
- in the next assessment made after Completion of the whole of the *works*; or

- in the next assessment after the *Client* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.

The amount retained remains at this amount until the date when the Defects Certificate is due to be issued. No amount is retained in the assessments made after the Defects Certificate is due to be issued.

- X16.3 If stated in the Contract Data or agreed by the *Client*, the *Contractor* may give the *Client* a retention bond, provided by a bank or insurer which the *Project Manager* has accepted, for the total amount to be retained and in the form set out in the Scope. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. Any amount retained after the *Contractor* gives the *Client* a retention bond is paid to the *Contractor* in the next assessment.

OPTION X17: LOW PERFORMANCE DAMAGES

Low performance damages	X17	
	X17.1	If a Defect included in the Defects Certificate shows low performance with respect to a performance level stated in the Contract Data, the Contractor pays the amount of low performance damages stated in the Contract Data.

OPTION X18: LIMITATION OF LIABILITY

Limitation of liability	X18	
	X18.1	Each of the limits to the <i>Contractor's</i> liability in this clause X18 apply if a limit is stated in the Contract Data.
	X18.2	Each Party's liability to the other for the other's Indirect Losses is limited to the amount stated in the Contract Data.
	X18.3	For any one event, the liability of the <i>Contractor</i> to the <i>Client</i> for loss or damage to the <i>Client's</i> property is limited to the amount stated in the Contract Data.
	X18.4	
	X18.5	

X18.6

X18.7 The *Contractor* is not liable to the *Client* for a matter unless details of the matter are notified to the *Contractor* before the *end of liability date*.

OPTION X20: KEY PERFORMANCE INDICATORS¹⁰ (NOT USED WITH OPTION X12)

Incentives

X20
X20.1

A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later changed in accordance with the contract.

X20.2

From the *starting date* until the Defects Certificate has been issued, the *Contractor* reports to the *Project Manager* its performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.

X20.3

If the *Contractor's* forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, it submits to the *Project Manager* its proposals for improving performance.

X20.4

The *Contractor* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.

X20.5

The *Client* may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.

OPTION X21: WHOLE LIFE COST

Whole life cost

X21
X21.1

The *Contractor* may propose to the *Project Manager* that the Scope is changed in order to reduce the cost of operating and maintaining an asset.

X21.2

If the *Project Manager* is prepared to consider the change, the *Contractor* submits a quotation which comprises:

- a detailed description;
- the forecast cost reduction to the *Client* of the asset over its whole life;
- an analysis of the resulting risks to the *Client*;
- the proposed changes to the Prices; and
- a revised programme showing any changes to the Completion Date and Key Dates.

X21.3

The *Project Manager* consults with the *Contractor* about a quotation. The *Project Manager* replies within the *period for reply*. The reply is acceptance of the quotation or the reasons for not accepting it. The *Project Manager* may give any reason for not accepting the quotation.

X21.4 The *Project Manager* does not change the Scope as proposed by the *Contractor* unless the *Contractor's* quotation is accepted.

X21.5 When a quotation to reduce the costs of operating and maintaining an asset is accepted the *Project Manager* changes the Scope, the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. The change to the Scope is not a compensation event.

OPTION X22: EARLY CONTRACTOR INVOLVEMENT

Defined terms X22

X22.1

- (1) The Access Dates are the *access dates* unless later changed in accordance with the contract.
- (2) Budget is the items and amounts stated in the Contract Data unless the amounts are later changed in accordance with the contract.
- (3) Project Cost is the total paid by the *Client* to the *Contractor* and Others for the items included in the Budget.
- (4) Stage One and Stage Two have the meanings given to them in the Scope.
- (5) Pricing Information is information which specifies how the *Contractor* prepares its assessment of the Prices for Stage Two, and is in the document which the Contract Data states it is in.

Forecasts

X22.2

- (1) The *Contractor* provides detailed forecasts of the total Defined Cost of the work to be done in Stage One for acceptance by the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until the issue of a notice to proceed to Stage Two. For Stage One, the *Contractor* agrees that each forecast of the total Defined Cost is based on the relevant part of its forecast submitted by the *Contractor* as part of its tender submission.
- (2) Within one week of the *Contractor* submitting a forecast for acceptance, the *Project Manager* either accepts the forecast or notifies the *Contractor* of the reasons for not accepting it. A reason for not accepting the forecast is that:
 - it does not comply with the Scope;
 - it is an unreasonable change to the tendered Resources Schedule and/or any accepted forecast or
 - it includes work which is not necessary for Stage One.
- (3) The *Contractor* makes a revised submission taking account of the *Project Manager's* reasons.
- (4) The cost of any work that is not included in the accepted forecast is treated as a Disallowed Cost.
- (5) The *Contractor* prepares forecasts of the Project Cost in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *works*. An explanation of the changes made since the previous forecast is submitted with each forecast.
- (6) For Stage One, the *Contractor* gives an early warning as soon as it becomes aware that a forecast or resource schedule will not accurately reflect the total of the Price for Stage One.

Proposals for Stage Two

X22.3

- The *Contractor* prepares its proposals for Stage Two in consultation with the *Client*, *Project Manager* and Others and submits them to the *Project Manager* in accordance with the submission procedure stated in the Scope. The submission includes the *Contractor's* forecast of the effect of the proposals on the Project Cost and the Accepted Programme.
- By the date set out in the Accepted Programme the *Contractor* submits to the *Client* and the *Project Manager* for acceptance:
 - its proposals for Stage Two;
 - a revised programme;

- any changes to:
 - the Access Date;
 - any Key Dates;
 - the Access Regime;
 - the Site Information;
 - the Completion Date;
 - the Accepted Programme;
 - the Contract Data;
 - the Scope;
 - the identified Exceptional Equipment;
 - the Key Performance Indicators;
 - the Incentive Schedule;
 - the identified Affiliates;
 - the indexation provisions for Stage Two;
 - the identified Key-Subcontractors; and/or
 - any other information that the Parties agree shall form part of the *Contractor's* proposals; and
- the total of the Prices or any change to the total of the Prices, in accordance with the submission procedure stated in the Scope (the "Final Proposal").

If the main Option is C, the total of the Prices is in the form of revisions to the Activity Schedule. A revised Activity Schedule includes the Price for Work Done to Date in Stage One.

- (1) If the Final Proposal is not accepted, the *Project Manager* gives reasons. A reason for not accepting a *Contractor's* submission is that:
 - it does not comply with the Scope;
 - it will cause unnecessary delay to the Access Dates, Key Dates or the Completion Date;
 - it will cause the *Client* to incur unnecessary costs to Others; or
 - the *Project Manager* is not satisfied that the total of the Prices or any changes to the total of the Prices have been properly assessed .
- (2) The *Contractor* makes a revised submission of the Final Proposal taking account of the *Project Manager's* reasons and the procedure set out in this clause X22.3 is repeated until the *Project Manager* accepts the Final Proposal.
- (3) The total of the Prices for Stage Two is assessed by the *Contractor* using the Pricing Information stated in the Contract Data.
- (4) The *Contractor* obtains approvals and consents from Others as stated in the Scope.
- (5) During Stage One the *Project Manager* and *Contractor* may agree to change the Site Information. The *Project Manager* changes the Site Information as agreed.
- (6) The *Contractor* completes any outstanding design during Stage Two.
- (7) If the *Contractor's* obligation to Provide the Works is terminated during Stage One:
 - the amount due under A4 is the *fee percentage* applied to any excess of the first forecast of the Defined Cost for the work to be done in Stage One over the Price for Work Done to Date less the Fee; and
 - there is no assessment of the *Contractor's* share.

Key persons	X22.4	The <i>Contractor</i> does not replace any <i>key person</i> during Stage One unless: • the <i>Project Manager</i> instructs the <i>Contractor</i> to do so; or • the person is unable to continue to act in connection with the contract.
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Notice to proceed to Stage Two	X22.5	(1) At the end of Stage One the <i>Client</i> may subject to X22.5(2) issue at its absolute discretion either a Notice to Proceed to Stage Two or a notice that the <i>works</i> will not proceed to Stage Two. (2) The <i>Client</i> may issue a Notice to Proceed to Stage Two when: • the <i>Contractor</i> has obtained all approvals and consents from Others as stated in the Scope to allow the <i>Contractor</i> to proceed to Stage Two; • the <i>Client</i> has confirmed the following: ○ that the total of the Prices for Stage Two;
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- any changes to:
 - the Access Date;
 - any Key Dates;
 - the Access Regime;
 - the Site Information;
 - the Completion Date;
 - the Accepted Programme;
 - the Contract Data;
 - the Scope;
 - the identified Exceptional Equipment;
 - the Key Performance Indicators;
 - the Incentive Schedule;
 - the identified Affiliates;
 - the identified Key-Subcontractors; and/or
 - any other information that the Parties agree shall form part of the *Contractor's* proposals,

as submitted by the *Contractor* in accordance with clause X22.3 are agreed.

- (3) After a Notice to Proceed to Stage Two is issued:
- any change to the Prices, Completion Date or Key Dates for a compensation event that occurred before the issue of the Notice to Proceed to Stage Two is treated as included in the change to the Prices, Key Dates and Completion Date in the Notice to Proceed to Stage Two;
 - a compensation event which is judged against the Contract Date is instead judged against the *starting date* included in the updated Contract Data appended to the Notice to Proceed to Stage Two.
- (4) If the *Client* issues a notice that the *works* will not proceed to Stage Two, the *Project Manager*:
- issues an instruction that the work in Stage Two is removed from the Scope;
 - changes the Completion Date to the date of Completion of Stage One; and
 - changes the Prices to match the Price for Work Done to Date at the end of Stage One.

The instruction to remove the work in Stage Two from the Scope is not a compensation event and the *Client* may appoint another contractor to carry out the Stage Two *works*.

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|------------------------------|-------|---|
| Changes to the Budget | X22.6 | <p>(1) If one of the following events happens, the <i>Project Manager</i> and the <i>Contractor</i> discuss different ways of dealing with changes to the Budget which are practicable.</p> <ul style="list-style-type: none"> • The <i>Project Manager</i> gives an instruction changing the <i>Client's</i> requirements stated in the Scope. • Additional events stated in the Contract Data. <p>(2) The <i>Project Manager</i> and the <i>Contractor</i> agree changes to the Budget within four weeks of the event arising which changes the Budget. If the <i>Project Manager</i> and the <i>Contractor</i> cannot agree the changes to the Budget the <i>Project Manager</i> assesses the change and notifies the <i>Contractor</i> of the assessment.</p> |
| Incentive payment | X22.7 | <p>(1) If a Notice to Proceed to Stage Two is issued and the final Project Cost is less than the Budget, the <i>Contractor</i> is paid the budget incentive. The budget incentive is calculated by multiplying the difference between the Budget and the final Project Cost by the percentage stated in the Contract Data.</p> <p>(2) The <i>Project Manager</i> makes a preliminary assessment of the budget incentive at Completion of the whole of the <i>works</i> and includes this in the amount due following Completion of the whole of the <i>works</i>.</p> <p>(3) The <i>Project Manager</i> makes a final assessment of the budget incentive and includes this in the final amount due.</p> |

OPTION X29-CLIMATE CHANGE

Defined terms	X29 X29.1	(1) The Climate Change Requirements are the requirements relating to climate change stated in the Scope. (2) The Climate Change Plan is the <i>climate change plan</i> or is the latest climate change plan accepted by the <i>Project Manager</i>. The latest climate change plan accepted by the <i>Project Manager</i> supersedes previous Climate Change Plans. (3) The Climate Change Partners are the people or organisations who contribute to the achievement of the Climate Change Requirements and are identified in the Climate Change Requirements. (4) The Performance Table states the targets the <i>Contractor</i> is to achieve in Providing the Works and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target. The Performance Table is the <i>performance table</i> unless later changed in accordance with the contract.
Collaboration	X29.2	The <i>Contractor</i> collaborates with other Climate Change Partners as stated in the Climate Change Requirements.
Early warning	X29.3	The <i>Contractor</i> and the <i>Project Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the achievement of the Climate Change Requirements.
Climate change plan	X29.4	(1) If a climate change plan is not identified in the Contract Data, the <i>Contractor</i> submits a first climate change plan to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data. (2) The Climate Change Plan shows how the <i>Contractor</i> plans to meet the Climate Change Requirements. (3) Within two weeks of the <i>Contractor</i> submitting a climate change plan for acceptance, the <i>Project Manager</i> notifies the <i>Contractor</i> of the acceptance of the climate change plan or the reasons for not accepting it. A reason for not accepting a climate change plan is that: • it does not comply with the Climate Change Requirements; or • it will not allow the <i>Contractor</i> to Provide the Works. (4) The <i>Contractor</i> submits a revised climate change plan to the <i>Project Manager</i> for acceptance: • within the period for reply after the Project Manager has instructed it to; and • when the <i>Contractor</i> chooses to.
Disclosure	X29.5	The Parties may use, disclose and publicise information relating to climate change as stated in and for the purposes stated in the Climate Change Requirements.
Acceleration and accepting Defects	X29.6	Quotations for acceleration and accepting Defects include any proposed changes to the Performance Table. If the quotation is accepted the <i>Project Manager</i> changes the Performance Table accordingly.
Notifying compensation events	X29.7	(1) For compensation events notified by the <i>Project Manager</i> that only affect the Performance Table, the <i>Project Manager</i> instructs the <i>Contractor</i> to submit quotations if the event does not arise from a fault of the <i>Contractor</i>, at the time of the notification of the compensation event. (2) If the <i>Contractor</i> does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Performance Table is not changed unless the event arises from the <i>Project Manager</i> or the <i>Supervisor</i> giving an instruction or notification or changing an earlier decision. (3) If a compensation event notified by the <i>Contractor</i> only affects the Performance Table the <i>Project Manager</i> notifies the <i>Contractor</i> that the event is a compensation event and includes in the notification an instruction to the <i>Contractor</i> to submit quotations unless the event:

		• arises from a fault of the <i>Contractor</i>; • has not happened and is not expected to happen; • has not been notified within the timescales set out in these <i>conditions of contract</i>; - or • is not one of the compensation events stated in the contract; in which case the <i>Project Manager</i> notifies the <i>Contractor</i> that the Performance Table is not to be changed and states the reasons in the notification. The notification is issued within one week of the <i>Contractor's</i> notification of the compensation event.
Quotations for compensation events	X29.8	Quotations for compensation events include proposed changes to the Performance Table assessed by the <i>Contractor</i> .
Assessing compensation events	X29.9	(1) A change to the Performance Table is assessed as the effect of the compensation event upon the targets, amounts and dates stated in the Performance Table. (2) The rights the <i>Client</i> and the <i>Contractor</i> have in respect of a compensation event include the right to changes to the Performance Table. (3) A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Performance Table were for the interpretation most favourable to the Party which did not provide the Scope.
Implementing compensation events	X29.10	When a compensation event is implemented the Performance Table is changed accordingly.
Contractor's proposals	X29.11	(1) The <i>Contractor</i> may propose to the <i>Project Manager</i> that the Scope is changed in order to reduce the impact of the creation, operation, maintenance or demolition of the works on climate change. (2) If the <i>Project Manager</i> is prepared to consider the change, the <i>Contractor</i> submits a quotation which comprises: • a detailed description; • an analysis of the reduction in the impact of the creation, operation, maintenance or demolition of the works on climate change; • an analysis of the resulting risks to the <i>Client</i>; • any changes to the Prices and Performance Table; • a revised programme showing any changes to the Completion Date and Key Dates. (3) The <i>Project Manager</i> consults with the <i>Contractor</i> about a quotation. The <i>Project Manager</i> replies within the <i>period for reply</i>. The reply is acceptance of the quotation or the reasons for not accepting it. The <i>Project Manager</i> may give any reason for not accepting the quotation. (4) The <i>Project Manager</i> does not change the Scope as proposed by the <i>Contractor</i> unless the <i>Contractor's</i> quotation is accepted. (5) When a quotation to reduce the impact of the creation, operation, maintenance or demolition of the works on climate change is accepted the <i>Project Manager</i> changes the Scope, the Prices, the Performance Table, the Completion Date and the Key Dates accordingly and accepts the revised programme. The change to the Scope is not a compensation event.
Performance measurements	X29.12	(1) From the <i>starting date</i> until Completion of the whole of the works, the <i>Contractor</i> reports to the <i>Project Manager</i> its performance against the targets in the Performance Table. Reports are provided at the intervals stated in the Performance Table. (2) If the <i>Contractor's</i> performance against a target in the Performance Table is not achieving or is forecast not to achieve the performance target stated, it submits to the <i>Project Manager</i> for acceptance its proposals for improving performance.

A reason for not accepting the proposals is that they will not provide the improvement in performance needed to achieve the target in the Performance Table.

(3) ~~At the dates stated in the Performance Table:~~

- ~~• if the relevant performance does not meet the target stated in the Performance Table, the Contractor pays the amount stated in the Performance Table;~~
- ~~• if the relevant performance exceeds or meets the target stated in the Performance Table, the Contractor is paid the amount stated in the Performance Table.~~

(4) ~~Information in the Performance Table is not Scope.~~

Limitation of liability

X29.13

~~If secondary Option X18 applies, an excluded matter is the amounts stated in the contract as payable by the Contractor in accordance with the Performance Table.~~

Option Y

OPTION Y(UK)1: PROJECT BANK ACCOUNT [DN: Applies to Stage Two only]

Project Bank Account Y(UK)1

Defined terms	Y1.1	(1) Joining Deed is an agreement in the form set out in the Form of Agreement under which the Supplier joins the Trust Deed. (2) Named Suppliers are <i>named suppliers</i> and other Suppliers who have signed the Joining Deed.¹¹ (3) The Payment Schedule is a list of payments to be made to the <i>Contractor</i> and Named Suppliers from the Project Bank Account. (4) Project Bank Account is the account used to receive payments from the <i>Client</i> and the <i>Contractor</i> and to make payments to the <i>Contractor</i> and Named Suppliers. (5) Project Bank Account Tracker is a register of all payments made to and from the Project Bank Account and the date each payment was made and is in the form stated in the Scope. (6) A Supplier is a person or organisation who has a contract to: • construct or install part of the <i>works</i>; • provide a service necessary to Provide the Works; or • supply Plant and Materials for the <i>works</i>. (7) Trust Deed is an agreement in the form set out in the Form of Agreement which contains provisions for administering the Project Bank Account.
	Y1.2	The <i>account holder</i> establishes the Project Bank Account with the <i>project bank</i> within four weeks of the Contract Date.
	Y1.3	Unless stated otherwise in the Contract Data, the <i>Contractor</i> pays any charges made (including money transmission costs and other disbursements incurred in the establishment and operation of the Project Bank Account) and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.
	Y1.4	If the <i>account holder</i> is the <i>Contractor</i> , it submits to the <i>Project Manager</i> for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments and inspections to be made in accordance with the contract. The <i>Contractor</i> provides to the <i>Project Manager</i> copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
	Y1.4A	The Parties agree that any monies paid into the Project Bank Account shall, as from the date on which such monies are paid into the Project Bank Account, be kept separate and distinct and clearly identifiable, and shall be held in trust for each of the <i>Contractor</i> and the Named Suppliers in the amounts owing to them as set out in the applicable Payment Schedule. The <i>Contractor</i> and the Named Suppliers agree that they have no rights and/or interest in the monies held in the Project Bank Account other than as a beneficiary of the monies owing to them.
Named Suppliers	Y1.5	The <i>Contractor</i> includes in its contracts with Named Suppliers the arrangements in the contract for the operation of the Project Bank Account and Trust Deed. The <i>Contractor</i> informs the Named Suppliers it appoints, the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

	Y1.6	The <i>Contractor</i> submits proposals for adding a Supplier to the Named Suppliers to the <i>Project Manager</i> for acceptance. A submission includes the Suppliers stated in the Scope and other Suppliers requested by the <i>Contractor</i> . A reason for not accepting a submission is that the addition of a Supplier does not comply with the Scope. The <i>Client</i> , the <i>Contractor</i> and the Supplier sign the Joining Deed after acceptance.
Payments	Y1.7	Until the Project Bank Account is established, payment is made by the <i>Client</i> to the <i>Contractor</i> .
	Y1.8	The <i>Contractor</i> shows in the application for payment the amounts due to Named Suppliers in accordance with their contracts.
	Y1.9	Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the <i>Contractor</i> and Named Suppliers in accordance with the contract: - the <i>Contractor</i> prepares the Payment Schedule, provides a copy to the <i>Project Manager</i> and provides the information in the Payment Schedule to the <i>project bank</i>; - the <i>Client</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract; and - the <i>Contractor</i> makes payment to the Project Bank Account of any amount which the <i>Client</i> has informed the <i>Contractor</i> it intends to withhold from the certified amount and which is required to make payment to Named Suppliers.
	Y1.10	The <i>Contractor</i> notifies the <i>Project Manager</i> if the amount due to any Named Supplier stated in the Payment Schedule is different from that in the payment certificate and provides reasons for the change.
	Y1.10A	All payments to the Named Suppliers and the <i>Contractor</i> shall be made by approved electronic bank transfer system. The Named Suppliers and the <i>Contractor</i> must inform the <i>project bank</i> of their relevant bank account details and keep them up to date at all times. The Named Suppliers and the <i>Contractor</i> accept that failure to do so may result in monies not being paid to them and that neither the <i>project bank</i> nor the <i>Client</i> shall have any liability for such failure.
	Y1.11	If the <i>account holder</i> is the <i>Contractor</i> , it authorises payment in accordance with the Payment Schedule no later than one day before the final date for payment. Following payment, the <i>Client</i> checks the amounts paid to the Named Suppliers by inspecting the Project Bank Account.
	Y1.12	If the <i>account holder</i> is the Parties, they jointly authorise payment in accordance with the Payment Schedule no later than one day before the final date for payment.
	Y1.13	Following authorisation, the <i>Contractor</i> and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Payment Schedule as soon as practicable after the Project Bank Account receives payment.
	Y1.14	The <i>Contractor</i> updates the Project Bank Account Tracker and submits it to the <i>Project Manager</i> within one week of any payment being made from the Project Bank Account.
	Y1.15	A payment which is due from the <i>Contractor</i> to the <i>Client</i> is not made through the Project Bank Account.
Effect of Payment	Y1.16	Payments made from the Project Bank Account are treated as payments from the <i>Client</i> to the <i>Contractor</i> in accordance with the contract. A delay in payment due to a failure of the <i>Contractor</i> to comply with the requirements of this clause is not treated as late payment under the contract.
Trust Deed	Y1.17	The <i>Client</i> , the <i>Contractor</i> and <i>named suppliers</i> sign the Trust Deed within two weeks of the Contract Date.
Termination	Y1.18	If the <i>Client</i> issues a termination certificate, no further payment is made into the Project Bank Account and any amounts retained by the <i>project bank</i> are held on trust for the <i>Client</i> .

**Acts and
omissions of
the *project*
*bank***

Y1.19

The Parties agree that the *Client* is not responsible for acts, omissions or faults of the *project bank* and the *project bank* is not deemed to be an Other for the purposes of the Contract.

OPTION Y(UK)2: THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

The Housing Grants, Construction and Regeneration Act 1996 Y(UK)2

Defined terms	Y2.1	In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays. The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
Dates for payment	Y2.2	The date on which a payment becomes due is seven days after the assessment date. The date on which the final payment becomes due is: • if the <i>Project Manager</i> makes an assessment after the issue of a Defects Certificate, five weeks after the issue of the Defects Certificate; • if the <i>Project Manager</i> does not make an assessment after the issue of a Defects Certificate, one week after the <i>Contractor</i> issues its assessment; or • if the <i>Project Manager</i> has issued a termination certificate, fourteen weeks after the issue of the certificate. The final date for payment is fourteen days after the date on which payment becomes due or a different period for payment if stated in the Contract Data. The <i>Project Manager's</i> certificate is, for the purpose of section 110 of the Act, the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated. If the <i>Project Manager</i> does not make an assessment after the issue of a Defects Certificate, the <i>Contractor's</i> assessment is the notice of payment.
Notice of intention to pay less	Y2.3	If either Party intends to pay less than the notified sum, it notifies the other Party not later than five days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under the contract unless it has notified its intention to pay less than the notified sum as required by the contract.
	Y2.4	R26 If the <i>Client</i> terminates for one of reasons R1 to R15, R18 or R22 –R25 and a certified payment has not been made at the date of the termination certificate, the <i>Client</i> makes the certified payment unless: • it has notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum; or • the termination is for one of reasons R1 to R10B and the reason occurred after the last date on which it could have notified the <i>Contractor</i> in accordance with the contract that it intends to pay less than the notified sum.
Suspension of performance	Y2.5	If the <i>Contractor</i> exercises its right under the Act to suspend performance, it is a compensation event. During any period when work is so suspended, the <i>Contractor</i> keeps secure and protects the works and all Equipment and Plant and Materials against any deterioration, loss, damage or theft as appropriate and maintains safety.
Authority of the Project Manager	Y2.6	The <i>Project Manager</i> is authorised by the <i>Client</i> to give and receive on behalf of the <i>Client</i> notices of payment, payment certificates, applications for payment, pay less notices and (if applicable) the final account in respect of the amount due on termination.

OPTION Y(UK)3: THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Third-party rights	Y(UK)3	
	Y3.1	A <i>beneficiary</i> may enforce the terms of the contract stated in the Contract Data under the Contracts (Rights of Third Parties) Act 1999.
	Y3.2	Other than the Parties or a <i>beneficiary</i>, no person can enforce any of the terms of the contract under the Contracts (Rights of Third Parties) Act 1999.
	Y3.4	If a <i>beneficiary</i> is identified by class or description and not as a named person or organisation, the <i>Client</i> notifies the <i>Contractor</i> of the name of the <i>beneficiary</i> once it has been identified.

OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

Additional conditions of contract	Z1	
	Z1.1	The <i>additional conditions of contract</i> stated in the Contract Data are part of the contract.

Schedule of Cost Components

An amount is included:

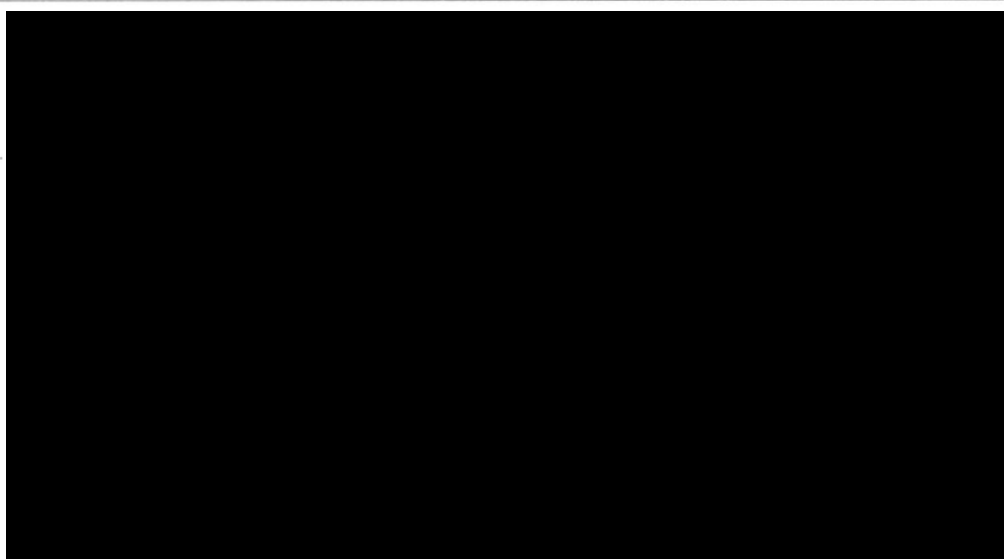
- only in one cost component; and
- only if it is incurred in order to Provide the Works.

If an amount could be included in more than one cost component, the Contractor notifies the Project Manager and proposes which component to include the amount in. The Project Manager:

- agrees with the Contractor's proposal; or
- determines which component to include the amount in.

People

1



- 11 For people who are directly employed by the *Contractor*, wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract.
- 12 For people who are directly employed by the *Contractor*, payments related to work on the contract and made to people for
 - (a) bonuses and incentives
 - (b) overtime
 - (c) working in special circumstances
 - (d) special allowances
 - (e) absence due to sickness and holidays
 - (f) severance.
- 13 For people who are directly employed by the *Contractor*, payments made in relation to people in accordance with their employment contract for
 - (a) travel
 - (b) subsistence and lodging
 - (c) relocation
 - (d) medical examinations
 - (e) passports and visas
 - (f) travel insurance
 - (g) items (a) to (f) for dependants
 - (h) protective clothing
 - (i) contributions, levies or taxes imposed by law

- (j) pensions and life assurance
- (k) death benefit
- (l) occupational accident benefits
- (m) medical aid and health insurance
- (n) a vehicle
- (o) safety training.

- 14 For people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time they work, the amounts paid by the *Contractor*.

Equipment	2 The following components of the cost of Equipment which is used within the Working Areas.
	2.1 Payments for the hire or rent of Equipment not owned by: • the <i>Contractor</i>; • the Guarantor; or • a company with the same ultimate holding company, at the hire or rental rate multiplied by the time for which the Equipment is required. 2.2 Payments for Equipment which is not listed in the Contract Data but is: • owned by the <i>Contractor</i>; • purchased by the <i>Contractor</i> under a hire purchase or lease agreement; or • hired by the <i>Contractor</i> from the Guarantor or from a company with the same ultimate holding company, at open market rates, multiplied by the time for which the Equipment is required. 2.3 Payments for Equipment purchased for work included in the contract listed with a time-related on cost charge, in the Contract Data, of: • the change in value over the period for which the Equipment is required; and • the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required. The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined. If the <i>Project Manager</i> agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data. 2.4 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required. If the <i>Project Manager</i> agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data. 2.5 Payments for the purchase price of Equipment which is consumed. 2.6 Unless included in the hire or rental rates, payments for: • transporting Equipment to and from the Working Areas other than for repair and maintenance; • erecting and dismantling Equipment; and • constructing, fabricating or modifying Equipment. 2.7 Payments for purchase of materials used to construct or fabricate Equipment. 2.8 Unless included in the hire rates, the cost of operatives is included in the cost of people.
Plant and Materials	3 The following components of the cost of Plant and Materials. 3.1 Payments for:

		• purchasing Plant and Materials; • delivery to and removal from the Working Areas; • providing and removing packaging; and • samples and tests.
	3.2	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Subcontractors	4	The following components of the cost of Subcontractors.
	4.1	Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the <i>Contractor</i> , which would result in the <i>Client</i> paying or retaining the amount twice.
Charges	5	The following components of the cost of charges paid or received by the <i>Contractor</i> .
	5.1	Payments for the provision and use in the Working Areas of: • water; • gas; • electricity; • telephone; and • internet.
	5.2	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	5.3	Payments for: (a) cancellation charges arising from a compensation event; (b) buying or leasing land or buildings within the Working Areas; (c) compensation for loss of crops or buildings; (d) royalties; (e) inspection certificates; (f) charges for access to the Working Areas; (g) facilities for visits to the Working Areas by Others; and (h) consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> offices.
	5.4	Payments made and received by the <i>Contractor</i> for the removal from Site and disposal or sale of materials from excavation and demolition.
Manufacture and fabrication	6	The following components of the cost of manufacture and fabrication of Plant and Materials by the <i>Contractor</i> which are: • wholly or partly designed specifically for the <i>works</i>; and • manufactured or fabricated outside the Working Areas.
	6.1	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacturing and fabrication of Plant and Materials outside the Working Areas.
Design	7	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	7.1	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on design of the <i>works</i> and Equipment outside the Working Areas.

- 7.2 The cost of travel to and from the Working Areas for the categories of design people listed in the Contract Data.

Insurance

- 8 The following are deducted from cost:
- the cost of events for which the contract requires the *Contractor* to insure; and
 - other costs paid to the *Contractor* by insurers.

The Price List



Schedule 5

Defra Conditions

Z1 The additional conditions of contract (Z clauses) referred to in the Contract Data are attached here and are incorporated as part of the *conditions of contract*.

A1 Interpretation

A1.1 For the purpose of these Defra Conditions, any terms defined in the Contract shall have the same meaning unless otherwise expressly provided herein.

A1.2 In these Defra Conditions, the following definitions shall apply:

Accounting Reference Date means in each year the date to which the *Contractor* prepares its annual audited financial statements.

Audit Agents are the *Client's* internal and external auditors:

- (a) the *Client's* statutory or regulatory auditors;
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (c) HM Treasury or the Cabinet Office;
- (d) any third party formally appointed by the *Client* to carry out audit or similar review functions; and
- (e) successors or assignees of any of the above.

Background IPR are any Intellectual Property Rights which a party owns or controls or which is created or acquired other than in the course of such party performing its obligations or exercising its rights under the Contract.

Cabinet Office Markets and Contractors Team means the UK Government's team responsible for managing the relationship between government and its Strategic Contractors, or any replacement or successor body carrying out the same function.

Change of Control means a change of control within the meaning of section 450 and/or section 1124 of Corporation Tax Act 2010.

Change of Control Grace Period means a grace period agreed by the *Client* for providing CRP Information and/or updates to Works Continuity Plan after a Change of Control.

Confidential Information is all confidential or proprietary information relating to the *works* made available to the *Contractor* or its representatives and/or the existence and terms of the Contract and any other agreement entered into between the *Client* and the *Contractor* or any of its Group, or their representatives, before, on or after the date of the Contract and/or any other agreement to be entered into in relation to the *works*. This includes:

- (a) any discussions and negotiations taking place concerning the *works*, the Contract and/or any other agreement entered into between the *Client* and the *Contractor* or any of its Group, or their representatives in relation to the Contract and/or any other agreement to be entered into in relation to the *works* and any other agreement entered into between the *Client* and the *Contractor* (or any of its Group) in relation to the *works*, and the status of those discussions and negotiations;
- (b) the existence and terms of the Contract and/or any other agreement to be entered into in relation to the *works* and any other agreement entered into between the *Client* and the *Contractor* (or any of its Group) in relation to the *works*;
- (c) all confidential or proprietary information relating to:
 - (i) issues in connection with the Contract and/or any other agreement to be entered into in relation to the *works*;

- (ii) the plans or intentions of the *Client* and/or its representatives; and
- (iii) the operations, processes, technical information or designs of the *Client*;
- (d) any information, findings, data or analysis derived from Confidential Information;
- (e) any other information that is identified as being of a confidential or proprietary nature; and
- (f) any information in connection with the *works*, the Contract and/or any other agreement to be entered into in relation to the *works*.

Contractor Related Party is any employee, Subcontractor or supplier of the *Contractor*.

Contractor's Personnel is any employee of the *Contractor* or of any Subcontractor who is either partially or fully engaged in the provision of the *works*.

Contracting Authority is any contracting authority (other than the *Client*) as defined in the Regulations.

Critical National Infrastructure means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (b) significant impact on the national security, national defence, or the functioning of the UK.

Crown is the Government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, Government ministers, Government departments, Government offices and Government agencies and “**Crown Body**” is an emanation of the foregoing.

CRP Information means the Corporate Resolution Planning Information, together, the:

- (c) Exposure Information (Contracts List);
- (d) Corporate Resolvability Assessment (Structural Review); and
- (e) Financial Information and Commentary.

Cyber Essentials is the Government-backed, industry-supported scheme managed by the National Cyber Security Centre to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the National Cyber Security Centre.

Data Protection Legislation is:

- (a) all applicable UK law relating to the processing and/or use of personal data and privacy, including but not limited to the UK GDPR, and the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (b) (to the extent that it may be applicable) the EU GDPR;
- (c) any corresponding or equivalent national laws or regulations, any laws which implement such laws, and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and/or
- (d) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant regulator, authority or body responsible for administering Data Protection Legislation (in each case whether or not legally binding).

In clause A2, the following expressions **Controller**, **Data Subject**, **Personal Data**, **Personal Data Breach** and **Processor** shall have the same meanings as in Article 4 of the GDPR.

Data Protection Impact Assessment is an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.

Data Loss Event is any event that results, or may result, in unauthorised access (physical or otherwise) to Personal Data stored, held, transmitted and/or processed by the Processor under the Contract, and/or actual or potential loss, corruption, alteration, unauthorised disclosure of and/or destruction of Personal Data in breach of the Contract.

Data Subject Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Department means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- a) Government Department; or
- b) Non-Ministerial Department.

Disaster is the occurrence of one or more events which, either separately or cumulatively, mean that the *works*, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for seven (7) days or such other period as the Parties may agree.

Disaster Recovery System means the system identified by the *Contractor* which shall be used for the purpose of delivering the Disaster Recovery Works.

Disaster Recovery Works means the works embodied in the processes and procedures for restoring the *works* following the occurrence of a Disaster.

Documents are any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, source code and build information for proprietary components and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the *Contractor* or any Subcontractor (whether in existence or to be created) in connection with the *works* and all such other documentation as would reasonably be required by a competent third party capable of the Standard of Care contracted by the *Client* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *works*.

DOTAS is the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- (b) provide prescribed information on those arrangements or proposals within set time limits as:
 - (i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and
 - (ii) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

DPA 2018 is the Data Protection Act 2018.

EIRs are the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

EU GDPR is the General Data Protection Regulation (EU) 2016/679.

FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

Foreground IPR are any Intellectual Property Rights created by or on behalf of a party in the course of the performance of the obligations or exercise of rights under the Contract.

GDPR means, as applicable, the EU GDPR or the UK GDPR.

General Anti-Abuse Rule is:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

Group is in relation to a company, that company, any Subsidiary or Holding Company from time to time of that company, and any Subsidiary from time to time of a Holding Company of that company. Each company in a Group is a member of the Group.

Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and Others.

Holding Company is a holding company as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

Information has the meaning given under section 84 of the Freedom of Information Act 2000.

Intellectual Property Rights are patents, inventions, trademarks, service marks, copyright, rights in a design, know-how, database rights, applications for any of the foregoing, domain names, trade or business names, moral rights, goodwill and other similar rights or obligations, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or registrable and whether subsisting in any country (including but not limited to the United Kingdom) together with all or any goodwill relating or attached thereto.

Insolvency Events means any of the reasons R1 to R10B as identified in clause 91.1 of the Contract.

Law Enforcement Processing is processing under Part 3 of the DPA 2018.

Occasion of Tax Non-Compliance is:

- (a) any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 that is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- (b) any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 that gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date the Contract came into effect or to a civil penalty for fraud or evasion.

Personnel is any director, person or employee who is duly authorised by the *Contractor* or any member of the Supply Chain to act for the purposes of the provision of the *works* and identified in the Contract or in any subsequent notice to act for the purposes of the provision of the *works*.

Prohibited Act is:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Authority or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of the relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; and/or
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the *Client*; or
 - (iv) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

Processing has the same meaning as in the Data Protection Legislation and **process** and **processed** shall be construed accordingly.

Protective Measures are appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and the Contract, and to ensure a level of security appropriate to the risks that are presented by the processing contemplated by the Contract (and in particular to protect against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data) which measures may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident and/or a Data Loss Event, and regularly assessing and evaluating the effectiveness of the measures adopted by it including those outlined in clause A2.21.

Public Sector Dependent Contractor means a *contractor* where that contractor, or that Contractor's group has annual revenue of £50 million or more of which over 50% is generated from UK Public Sector Business.

Regulations is the Public Contracts Regulations 2015 as amended, extended, re-enacted or replaced from time to time and '**Regulation**' means any one of them or (as the case may be) any specified provision of such regulations.

Relevant Requirements are all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.

Request for Information is a request for information or an apparent request under the FOIA and "**Requests for Information**" shall be construed accordingly.

Secret Matter is information or data issued or made available to Personnel in connection with the Contract by or on behalf of the *Client* which is designated by the *Client* in the Security Aspects Letter (as defined in the Contract) or otherwise in writing as "Top Secret" or "Secret" using the classification identified in the Security Policy Framework, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

Security Policy Framework is the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

Standard Contractual Clauses (SCCs) means the Information Commissioner's Office's International Data Transfer Agreement for the transfer of personal data from the UK and/or the Information Commissioner's Office's International Data Transfer Addendum to EU Commission Standard Contractual Clauses and/or the European Commission's Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 as set out in the Annex to Commission Implementing Decision (EU) 2021/914 and/or the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU, or such alternative clauses as may be approved by the European Commission or by the UK from time to time.

Strategic Contractor means those contractors to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>.

Sub-processor is any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

Subcontract is any subcontract entered into or to be entered into by the *Contractor* or any purchase order placed or to be placed by the *Contractor* in connection with the Contract where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the *Contractor* under that subcontract or purchase order is or is reasonably estimated to be greater than the sum of £25,000 (twenty five thousand pounds sterling) or such other Subcontract package that the *Client* considers to be material and '**Subcontractor**' shall be construed accordingly.

Supervisory Authority is any independent public authority responsible for monitoring the application of the Data Protection Legislation in the UK or any other member state of the European Union.

Supply Chain is:

- (a) any third party with whom:
 - (i) the *Contractor* enters into a contract or agreement for *works* to be carried out; or
 - (ii) a third party under (i) above enters into a contract or agreement for *works* to be carried out; and
- (b) all directors, officers, employees, agents, *Contractors* and contractors of any party referred to in this definition engaged in the performance of the *Contractor's* obligations under the Contract.

Subsidiary is a subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

Transparency Information is:

- (a) the content of the Contract in its entirety, including from time to time agreed changes to the Contract; and
- (b) details of any payments made by the *Client* to the *Contractor* under the Contract.

UK GDPR has the meaning given in section 3(10) of the DPA 2018 (as amended).

UK Public Sector Business means any goods, services or works provision to UK public sector bodies, including Crown Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations.

Works Continuity Plan means the plan prepared pursuant to Paragraph 1 of Annex 1 which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

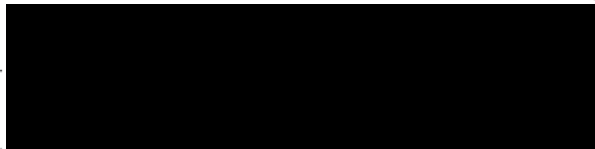
A2 Data Protection

- A2.1 In this clause A2 (*Data Protection*), "**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Processor is bound to comply.
- A2.2 In connection with the Personal Data received under the Contract, each party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data provided to it by the other party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.
- A2.3 The Parties acknowledge that for the purposes of Data Protection Legislation, the *Client* is the Controller and the *Contractor* is the Processor. The only processing that the *Contractor* is authorised to do is listed in clause A2.24 by the *Client* and may not be determined by the *Contractor*.
- A2.4 The *Contractor* shall notify the *Client* immediately if it considers that any of the *Client's* instructions infringe Data Protection Legislation.
- A2.5 The *Contractor* shall provide all reasonable assistance to the *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the *Client*, include;
- A2.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- A2.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the *works*;
- A2.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- A2.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- A2.6 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
- A2.6.1 process that Personal Data only in accordance with clause A2.24 and this clause A2 (*Data Protection*) unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Client* before processing the Personal Data unless prohibited by Law;
- A2.6.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the *Client* may reasonably reject. In the event of the *Client* reasonably rejecting Protective Measures put in place by the *Contractor*, the *Contractor* must propose alternative Protective Measures to the satisfaction of the *Client*. Failure to reject shall not amount to approval by the *Client* of the adequacy of the Protective Measures. Protective Measures must take account of the:
- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development;
- (d) cost of implementing any measures;
- (e) the nature, scope, context and purposes of the processing; and
- (f) the likelihood and severity of risk to the rights and freedoms of Data Subjects;

- A2.6.3 ensure that:
- (a) the *Contractor's* Personnel do not process Personal Data except in accordance with the Contract (and in particular clause A2.24);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any *Contractor's* Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the *Contractor's* duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the *Contractor* or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Client* or as otherwise permitted by the Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- A2.6.4 not transfer Personal Data outside of the UK unless the prior written consent of the *Client* has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
 - (b) the *Client* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller (and, where the transfer of Personal Data requires execution of SCCs in order to comply with Data Protection Legislation, the parties will complete all relevant details in, and execute, the required SCCs and take all other actions required to legitimise the transfer);
 - (c) the Data Subject has enforceable rights and effective legal remedies;
 - (d) the *Contractor* complies with its obligations under Data Protection Legislation by providing an appropriate and adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, to assist the *Client* in meeting its obligations); and
 - (e) the *Contractor* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data.
- A2.7 Subject to clause A2.8, the *Contractor* shall notify the *Client* immediately if it:
- A2.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - A2.7.2 receives a request to rectify, block or erase any Personal Data;
 - A2.7.3 receives any other request, complaint or communication relating to either party's obligations under Data Protection Legislation;
 - A2.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
 - A2.7.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - A2.7.6 becomes aware of a Data Loss Event.
- A2.8 The *Contractor's* obligation to notify under clause A2.7 shall include the provision of further information to the *Client* in phases, as details become available.

- A2.9 Where the *Contractor* becomes aware of a Data Loss Event, it shall within one (1) hour or such other period as the *Client* may agree (acting reasonably) of becoming aware of a Data Loss Event provide the *Client* with the following written information:
- A2.9.1 a description of the Data Loss Event, including the categories of Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
 - A2.9.2 the likely consequences; and
 - A2.9.3 a description of the measures taken or proposed to be taken to address the Data Loss Event, including measures to mitigate its possible adverse effects.
- A2.10 Taking into account the nature of the processing, the *Contractor* shall provide the *Client* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause A2.7 (and insofar as possible within the timescales reasonably required by the *Client*) including but not limited to promptly providing:
- (a) the *Client* with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the *Client* to enable the *Client* to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the *Client*, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) without prejudice to clause A2.9, assistance as requested by the *Client* following any Data Loss Event including, without limitation:
 - (i) assisting with any investigation;
 - (ii) providing the *Client* with physical access to any facilities and operations affected;
 - (iii) facilitating interviews with the *Contractor's* employees, former employees and others involved in the matter including, without limitation, its officers and directors
 - (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the *Client*; and
 - (v) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Data Loss Event; and
 - (e) assistance as requested by the *Client* with respect to any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office.
- A2.11 The *Contractor* will not inform any third party except as reasonably required to notify insurers of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Data Loss Event without first obtaining the *Client's* written consent, except when required to do so by Law.
- A2.12 The *Contractor* shall reimburse the *Client* in respect of all reasonable expenses:
- A2.12.1 associated with the performance of the obligations under clause A2.9 and A2.10(c); and
 - A2.12.2 incurred by the *Client* when responding to a Data Loss Event.
- A2.13 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause A2 and shall, on request by the *Client*, make available all information necessary to demonstrate that compliance.
- A2.14 The *Contractor* shall allow for audits of its Data Processing activity by the *Client* or the *Client's* designated auditor.

- A2.15 Each party shall designate its own Data Protection Officer if required by Data Protection Legislation.
- A2.16 Before allowing any Sub-processor to process any Personal Data related to the Contract, the *Contractor* must:
- (a) notify the *Client* in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the *Client*;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause A2 such that they apply to the Sub-processor; and
 - (d) provide the *Client* with such information regarding the Sub-processor as the *Client* may reasonably require.
- A2.17 The *Contractor* shall remain fully liable for all acts or omissions of any of its Sub-processors.
- A2.18 The *Client* may, at any time on not less than thirty (30) days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms laid down by the European Commission or adopted by the Information Commissioner's Office or other Supervisory Authority and/or forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- A2.19 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may upon giving the *Contractor* not less than thirty (30) days' notice amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- A2.20 The *Contractor* indemnifies the *Client* against all loss, liabilities, costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any claim or proceedings under any Data Protection Legislation whatsoever or howsoever arising resulting from, or in connection with, any act or omission of the *Contractor* or any Sub-Processor (including, without limitation, any unlawful or unauthorised processing, destruction and/or damage to Personal Data in connection with the Contract and/or any act or omission of the *Contractor* that directly or indirectly causes a Data Loss Event).
- A2.21 On termination or expiry of the Contract, the *Contractor* shall return to the *Client* any Personal Data that is Processed in connection with the exercise of the Parties' rights and obligations under the Contract and data belonging to the *Client* that is in the *Contractor's* possession, power or control, either in its then current format or in a format nominated by *Client*, save that the *Contractor* may keep one (1) copy of any such data or information if required by applicable Law for a period of up to twelve (12) months to comply with its obligations under the Contract, or such period as is necessary for such compliance.
- A2.22 The *Contractor* shall certify in writing to the *Client* that it has deleted or destroyed the Personal Data within 3 days after it completes the deletion or destruction.
- A2.23 The contact details of the Data Protection Officers are as follows:

Details of the <i>Client's</i> Data Protection Officer:	
Details of the <i>Contractor's</i> Data Protection Officer:	

- A2.24 Personal Data shall be processed in accordance with this clause A2 as set out below:

Identity of the Controller and Processor	The Parties acknowledge that for the purposes of Data Protection Legislation, the <i>Client</i> is the Controller and the <i>Contractor</i> is the Processor in accordance with clause A2.3.
Subject matter of the Processing	The Processing is needed in order to ensure that the Processor can provide the <i>works</i> and to exercise and comply with its rights and obligations under the Contract.

Duration of the Processing	For the duration of the Contract.
Nature and purposes of the Processing	The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure or destruction of the data (whether or not by automated means). The purpose is: for the exercising and compliance with its rights and obligations under the Contract, including the performance of the <i>works</i> .
Type of Personal Data being Processed	As per the <i>works</i> .
Categories of Data Subject	Staff, suppliers and agents of the <i>Client</i> . Other contactors and <i>Contractors</i> employed by the <i>Client</i> . Other associated parties of the <i>Client</i> relevant to the exercising and compliance with its rights and obligations under the Contract, including the performance of the <i>works</i> .
International transfers and legal gateway	No transfers of Personal Data outside of the United Kingdom unless otherwise specified in the Contract.
Plan for return and destruction of the data once the Processing is complete	As set out in clauses A2.21 to A2.22 of the Contract.

A2.25 The *Contractor* shall not process and/or transfer any Personal Data outside of the United Kingdom without the *Client's* prior written consent.

A3 Freedom of Information

A3.1 The *Contractor* acknowledges that unless the *Client* has notified the *Contractor* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the FOIA and the EIRs. The *Contractor* co-operates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

A3.2 The *Contractor*:

A3.2.1 transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;

A3.2.2 provides the *Client* with a copy of all Information relevant to the Request for Information in its possession or power in the form that the *Client* requires within five (5) Business Days (or such other period as the *Client* may specify) of the *Client's* request;

A3.2.3 provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs; and

A3.2.4 procures that its Subcontractors do likewise.

A3.3 The *Client* is responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs and, for the avoidance of doubt, the *Client* shall not be in breach of clause A4 where it is required to disclose Confidential Information to comply with the provisions of the FOIA and/or the EIRs.

A3.4 The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the *Client*.

A3.5 The *Contractor* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Client* to inspect such records as and when reasonably requested from time to time.

A4 Confidentiality provisions

A4.1 Subject to clause A4.4:

A4.1.1 the *Contractor* shall, and shall procure that each Subcontractor shall, keep confidential and shall not use for any purpose, other than for the purposes of providing the *works*, all information relating to the *Client*, relevant third parties, the *works*, any contracts, the Contract and any customer information which is required to be protected under the Data Protection Legislation; and

A4.1.2 the *Client* shall keep confidential all matters relating to the terms of the Contract and the performance by the *Contractor* of its obligations under the Contract.

A4.2 The *Contractor* shall not:

A4.2.1 publish or contribute to any article or utilise for any public presentation, seminars, lectures or other form of dissemination any information or knowledge resulting from its involvement in the Contract;

A4.2.2 make any statement on behalf of the *Client* outside the *Contractor's* responsibility for providing the *works*; or

A4.2.3 take any photograph or video of the *works* or publish the same, without the prior written consent of the *Client*.

A4.3 The *Contractor* shall inform the *Client* immediately if it comes to the notice of the *Contractor* that any Confidential Information has been improperly disclosed or misused.

A4.4 The *Contractor* shall, at its own cost, take such steps necessary (including legal proceedings) to prevent the improper disclosure, dissemination or misuse of any Confidential Information. The *Contractor* shall promptly notify the *Client* of the *Contractor's* proposed steps (including legal proceedings) for the approval of the *Client*. The *Contractor* shall, at its own cost, take such additional steps (including legal proceedings) to prevent the improper disclosure, dissemination or misuse of any Confidential Information as the *Client* may reasonably require.

A5 Security Measures

A5.1 The *Contractor* will at the Contract Date have in place the signed and executed Security Aspects Letter and have delivered it to the *Client*. The *Contractor* will comply with all requirements in the Security Aspects Letter. Failure to comply with this clause A5.1 shall constitute a substantial failure by the *Contractor* to comply with its obligations.

A5.2 The Official Secrets Acts 1911 to 1989 apply to the Contract.

A5.3 The *Contractor* shall notify all Personnel engaged on any work in connection with the Contract of their duties under the Official Secrets Acts 1911 to 1989 and that these acts will continue so to apply after the completion or termination of the Contract.

A5.4 Unless they have the written authorisation of the *Client* to do otherwise, neither the *Contractor* nor any of their Personnel shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in any Secret Matter being disclosed to or acquired by a person in any of the following categories:

A5.4.1 who does not hold the appropriate authority for access to the protected matter;

A5.4.2 in respect of whom the *Client* has notified the *Contractor* in writing that the Secret Matter shall not be disclosed to or acquired by that person; or

A5.4.3 who is a Personnel of the *Contractor* and has no need to know the information for the proper performance of the Contract.

A5.5 Unless they have the written authorisation of the *Client* to do otherwise, the *Contractor* and their Personnel shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

A5.5.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract; and

- A5.5.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request, is delivered up to the *Client* who shall be entitled to retain it.

A decision of the *Client* on the question of whether the *Contractor* has taken or is taking reasonable steps as required by this clause, shall be final and conclusive.

A5.6 The *Contractor* shall:

A5.6.1 provide to the *Client*:

- (a) upon request, such records giving particulars of those Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with clause A5.5.2;
- (b) upon request, such information as the *Client* may from time to time require so as to be satisfied that the *Contractor* and their Personnel are complying with their obligations under this clause, including the measures taken or proposed by the *Contractor* so as to comply with their obligations and to prevent any breach of them; and
- (c) full particulars of any failure by the *Contractor* and their Personnel to comply with any obligations relating to any Secret Matter arising under this clause immediately upon such failure becoming apparent, and

A5.6.2 ensure that, for the purpose of checking the *Contractor's* compliance with the obligation in clause A5.5.2, a representative of the *Client* shall be entitled, at any time, to enter and inspect any premises used by the *Contractor*, which are in any way connected with the Contract, and inspect any document or thing in any such premises which is being used, or made for the purposes of the Contract. Such representative shall be entitled to all such information as it may reasonably require.

- A5.7 If at any time either before or after the completion or termination of the Contract, the *Contractor* or any of their Personnel discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the *Contractor* shall forthwith inform the *Client* of the matter with full particulars thereof.

Subcontracts

- A5.8 If the *Contractor* proposes to enter into a Subcontract which will involve the disclosure of Secret Matter to the Subcontractor, the *Contractor* shall:

- A5.8.1 submit for approval of the *Client* the name of the proposed Subcontractor, a statement of the work to be carried out and any other details known to the *Contractor* which the *Client* shall reasonably require;
- A5.8.2 incorporate into the Subcontract such secrecy and security obligations as the *Client* shall direct (acting reasonably); and
- A5.8.3 inform the *Client* immediately if they become aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the *Client*, terminate the Subcontract.

A6 Cyber Essentials Scheme

- A6.1 The *Contractor* shall, and shall procure that any Subcontractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the "**Cyber Essentials Certificate**") in relation to the works. The Cyber Essentials Certificate shall be provided by the *Contractor* to the *Client* annually on the dates as agreed by the Parties.

- A6.2 The *Contractor* shall notify the *Client* of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within two (2) Business Days of confirmation of such failure or revocation. The *Contractor* shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate after the first date on which the *Contractor* was required to provide a Cyber Essentials Certificate in accordance with clause

A6.1 (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the *Contractor* to comply with their obligations.

A7 Transparency

- A7.1 Notwithstanding any other term of the Contract or these Defra Conditions where applicable, the *Contractor* understands that the *Client* may publish (and gives its consent to publishing) the Transparency Information to the general public in its entirety (but with any information redacted which is exempt from disclosure in accordance with the provisions set out below).
- A7.2 The *Contractor* shall assist and co-operate with the *Client* to enable the *Client* to publish the Transparency Information. The *Contractor* agrees that any Transparency Information it holds that is reasonably relevant to or that arises from the performance of this Contract shall be provided to the *Client* on request at no cost to the *Client*.
- A7.3 Before publishing the Transparency Information to the general public in accordance with clause A7.1 above the *Client* shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIRs, including the *Contractor's* Confidential Information.
- A7.4 The *Client* may consult with the *Contractor* before redacting any information from the Transparency Information in accordance with clause A7.3 above. The *Contractor* acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the *Client* shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.
- A7.5 For the avoidance of doubt, nothing in this clause A7 shall affect the *Contractor's* rights at law.

A8 Intellectual Property Rights

- A8.1 The *Client* shall grant the *Contractor* a non-exclusive, revocable, royalty-free licence until the Completion Date to use the *Client's* Intellectual Property Rights where it is necessary for the *Contractor* to provide the works. The *Contractor* shall have the right to sub-license a Subcontractor's use of the *Client's* Intellectual Property Rights. At the end of the *defects correction period*, the *Contractor* shall cease use, and shall ensure that the *Contractor's* Personnel cease use, of the *Client's* Intellectual Property Rights.

Foreground IPR

- A8.2 The *Contractor* hereby grants the *Client* a non-exclusive, perpetual, irrevocable and royalty-free transferable licence to use the Foreground IPRs for any purpose of the *Project*, together with the right to grant sub-licences for any purpose of the *Project* in the same terms as such licence.

Background IPR

- A8.3 Background IPR owned or controlled by a party shall remain vested in and the property of that party or, where applicable, the third party from whom the right to use the Background IPR has derived.
- A8.4 The *Contractor* hereby grants to the *Client* a non-exclusive, perpetual, irrevocable, royalty-free, transferable licence to use Background IPR:
- A8.4.1 where such Background IPR is necessary for the *Client* to fully exploit its rights under any Foreground IPR in connection with the Contract; and
- A8.4.2 for any purpose relating to the Contract,
- together with the right to grant sub-licences in the same terms as such licence.
- A8.5 The *Contractor* warrants to the *Client* that:
- A8.5.1 it has and will have the legal capacity, right, power and authority to enter into such licence of the rights granted in the Contract;
- A8.5.2 it is the legal and beneficial owner of the Background IPR and Foreground IPR created by or on behalf of the *Contractor* and/or has the right to grant the rights granted in the Contract relating to Background IPR and Foreground IPR (and each part thereof);

- A8.5.3 the rights granted by the *Contractor* under the Contract do not infringe (and no part thereof infringes) any Intellectual Property Rights of any third party in any jurisdiction; and
- A8.5.4 it has not entered into any agreement or arrangement (whether or not legally enforceable) for the assignment or licensing or other use of the Intellectual Property Rights granted by it under the Contract (or any part thereof) which would in any way prevent, restrict or otherwise inhibit the *Client's* use and exploitation of such Intellectual Property Rights or the Documents (or any part thereof).
- A8.6 The *Contractor* further warrants that no Intellectual Property Rights or Documents provided by the *Contractor* pursuant to the Contract shall infringe any Intellectual Property Rights of any third party and undertakes to indemnify and keep indemnified the *Client* from and against all costs, expenses, liabilities, direct and indirect and consequential losses (including pure economic loss, loss of profits, depletion of goodwill and like loss), damages, claims, proceedings and legal costs (on a full indemnity basis) arising out of or in connection with any such infringement.
- A8.7 The *Contractor* agrees to procure the waiver by any authors of Documents produced by the *Contractor* of the rights provided by Section 77 and Section 80 of the Copyright Designs and Patents Act 1988.
- A8.8 The *Contractor* shall not be liable to any licensee which the *Client* grants a licence to for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Contractor*.
- A8.9 In the event that the *Contractor* does not own the copyright or any Intellectual Property Rights in any Documents the *Contractor* uses all reasonable endeavours to procure the right to grant such rights to the *Client* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Contractor* is unable to procure the right to grant such rights to the *Client* in accordance with the foregoing, the *Contractor* procures that the third party grants a direct licence to the *Client* on industry acceptable terms to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the *Client* to sub-license, transfer, novate or assign to another Contracting Body, any replacement *Contractor* or to any other third party supplying works to the *Client*.
- A8.10 The *Contractor* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents to the extent that such exploitation is prohibited by the Security Aspects Letter and/or the confidentiality provisions of this Contract.
- A8.11 The *Contractor* supplies copies of the Documents to the *Client* and to the *Client's* other contractors and *Contractors* for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to the Contract or related works.
- A8.12 After the termination or conclusion of the Contract, the *Contractor* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request.
- A8.13 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the *Contractor* is likely to be made, the *Contractor* shall notify the *Client* and, at its own expense and subject to the consent of the *Client* (not to be unreasonably withheld or delayed), use its best endeavours to:
- A8.13.1 modify any or all of the works without reducing the performance or functionality, or substitute alternative works of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified works or to the substitute works,

and in the event that the *Contractor* is unable to comply with clause A8.13.1 within twenty (20) Business Days, or such other period of time agreed between the Parties, of receipt of the

Contractor's notification the *Client* may terminate the Contract with immediate effect by notice in writing.

A9 Modern Slavery Act

A9.1 In performing its obligations under the Contract, the *Contractor* undertakes and warrants that it at all times:

A9.1.1 shall comply with all applicable anti-slavery and human trafficking laws and regulations from time to time in force including the Modern Slavery Act 2015 and all related guidance issued by the Government;

A9.1.2 shall comply with any anti-slavery policy of the *Client* notified to the *Contractor* by the *Client*;

A9.1.3 has in place adequate procedures to maintain compliance as described in clauses A9.1.1 and A9.1.2; and

A9.1.4 shall impose on any Subcontractors and suppliers obligations equivalent to those set out in this clause A9.

A9.2 The *Contractor* shall implement and maintain throughout the Contract full and appropriate due diligence processes and procedures for its Subcontractors, suppliers and other participants in its Supply Chains so as to ensure that there is no slavery, human trafficking or otherwise forced or coerced labour in its Supply Chains.

A9.3 The *Contractor* shall deliver to the *Client* on or around each anniversary of the Contract:

A9.3.1 written confirmation of its continued compliance with all of the requirements of this clause A9; and

A9.3.2 if requested by the *Client*, a report setting out the steps it has taken to ensure that modern slavery and human trafficking is not taking place in any of its Supply Chains or in any part of its business.

A9.4 The *Contractor* shall notify the *Client* immediately as it becomes aware of:

A9.4.1 any breach, or potential breach, of any anti-slavery policy of the *Client* from time to time; or

A9.4.2 any actual or suspected slavery, human trafficking, forced or coerced labour in a Supply Chain that has a connection with the Contract or any breach, or potential breach, of any of the requirements of this clause A9.

A9.5 If the *Client* identifies or becomes aware of any potential or actual breach of this clause A9, the *Client* shall raise this with the *Contractor* and the *Contractor* will immediately implement a remedial plan to ensure that there are no further breaches of this clause A9. Where the *Contractor* fails to implement and/or comply with such remedial plan, it is acknowledged and agreed that the *Client* may, at its option and in its absolute discretion, terminate the Contract with immediate effect by giving written notice to the *Contractor*.

A10 Prevention of fraud and bribery

A10.1 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its Personnel, have at any time prior to the Contract Date:

A10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

A10.1.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act.

A10.2 Throughout the duration of the Contract the *Contractor* does not:

A10.2.1 commit a Prohibited Act; and/or

A10.2.2 do or suffer anything to be done which would cause the *Client* or any of the *Client's* Personnel, *Contractors*, contractors, subcontractors or agents to contravene any

of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

A10.3 In providing the *works*, the *Contractor*:

- A10.3.1 establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- A10.3.2 keeps appropriate records of its compliance with the Contract and make such records available to the *Client* on request; and/or
- A10.3.3 provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any *Contractor's* Personnel or any person acting on the *Contractor's* behalf from committing a Prohibited Act.

A10.4 The *Contractor* immediately notifies the *Client* in writing if it becomes aware of any breach of clauses A10.1, A10.2 and/or A10.3 or has reason to believe that it has or any of its Personnel or Subcontractors have:

- A10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- A10.4.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- A10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

A10.5 If the *Contractor* makes a notification to the *Client* pursuant to clause A10.4, the *Contractor* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with these Defra Conditions and the Contract.

A10.6 Without prejudice to clause A10.3 if the *Contractor* breaches clause A10.3, the *Client* may instruct the *Contractor* to remove a person employed by the *Contractor* who has caused the *Contractor* breach and the *Contractor* shall immediately ensure that person has no further connection with the work included in the Contract.

A11 Tax Compliance and VAT reverse charge

A11.1 The *Contractor* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

A11.2 If, at any point prior to the Completion Date, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall:

- A11.2.1 notify the *Client* in writing of such fact within five (5) Business Days of its occurrence; and
- A11.2.2 promptly provide to the *Client*:
 - (a) details of the steps which the *Contractor* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

A11.3 Pursuant to paragraph (1A) of Article 8 of The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the "**Order**"), the *Client* hereby confirms to the

Contractor that the requirements specified in paragraph (1)(b) of Article 8 of the Order are satisfied in respect of any supply of "specified services" by the *Contractor* to the *Client* under the Contract. Accordingly, any such supplies will be "excepted supplies" due to the *Client* being an "end user" for the purposes of the Order. The *Client* confirms that it will not account for the reverse charge.

A12 The Public Contracts Regulations 2015 (also known as PCR 2015)

Award of Contracts

- A12.1 In addition to and without prejudice to the operation of Regulation 71 of the Regulations, the *Contractor* shall:
- A12.1.1 not design and/or conduct the procurement process or procedure in respect of any Subcontract with the intention of unduly favouring or disadvantaging one or more economic operators; and
 - A12.1.2 provide reports to the *Client*, if so requested, on the number, type and value of Subcontract opportunities advertised and awarded in its Supply Chain during the Contract.
- A12.2 The *Contractor's* obligations provided in clauses A12.1.1 to A12.1.2 (inclusive) shall not apply where any of the following applies in relation to a Subcontract:
- A12.2.1 if that Subcontract shall have been notified by the *Contractor* to the *Client* as part of the *Contractor's* tender submission; or
 - A12.2.2 if the *Client* agrees in writing that clauses A12.1.1 to A12.1.2 (inclusive) shall not apply in connection with that Subcontract.
- A12.3 The *Contractor* shall not advertise or publicise in any manner the subject matter and/or any provision or provisions of any Subcontract and/or the Contract where the *Client* notifies the *Contractor* in writing directing the *Contractor* not to do so.

Termination under Regulation 73

- A12.4 The occurrence of the following event is deemed to be a substantial failure of the *Contractor* to comply with its obligations:
- A12.4.1 one or more of the mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Regulations applied to the *Contractor* at the date of the Contract.
- A12.5 The *Client* may terminate the *Contractor's* obligations under the Contract if it has been subject to substantial modification which would have required a new procurement procedure pursuant to Regulation 73 of the Regulations.
- A12.6 If such a modification or infringement was due to a default by the *Contractor*, this is treated as a termination because of a substantial failure of the *Contractor* to comply with its obligations.

A13 Equality

- A13.1 The *Contractor* shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- A13.2 Without prejudice to the generality of the obligation in clause A13.1 above, the *Contractor* shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Contract is being performed.
- A13.3 The *Contractor* agrees to take reasonable efforts to secure the observance of the provisions of this clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.
- A13.4 The *Contractor* agrees to take reasonable efforts to reflect this clause in any Subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this clause in their subcontracts that they enter into to satisfy the requirements of the Contract.

A14 Fair payment

- A14.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under the Contract.
- A14.2 The *Contractor* includes in the contract with each Subcontractor:
- A14.2.1 a provision requiring the Subcontractor to include in each subcontract the same requirement, except that the period for payment is to be not greater than thirty (30) Business Days after the date on which payment becomes due under the contract; and
 - A14.2.2 a provision requiring the Subcontractor to assess the amount due to a subcontractor without taking into account the amount paid by the *Contractor*.
- A14.3 The *Contractor* notifies the *Client* of any non-compliance with the timescales for payment. The *Contractor* includes this provision in each Subcontract and requires Subcontractors to include the same provision in each subcontract.
- A14.4 A failure to comply with this clause A14 is treated as a substantial failure by the *Contractor* to comply with their obligations.
- A14.5 If the *Contractor* wishes to issue to the Subcontractor and rely on any pay less notice issued in relation to any payment, this must be genuine and issued in good faith.

A15 Double Counting

- A15.1 There shall be no double counting in or under the Contract.
- A15.2 Where there is double counting, the *Contractor* shall pay or allow to the *Client* the relevant amount as a debt.

A16 Change of Control

- A16.1 Not used.
- A16.2 The *Contractor* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur.
- A16.3 If the Change of Control will not allow the *Contractor* to perform its material obligations under the Contract, the *Client* may treat the Change of Control as a substantial failure by the *Contractor* to comply with its obligations.
- A16.4 Not used.
- A16.5 Not used.
- A16.6 Where the *Client* considers (acting reasonably) that a Change of Control:
- A16.6.1 could have a material adverse effect on the Contractor's ability to comply with its obligations under the contract, the *Client* may:
 - (a) when it becomes aware of such Change of Control, may request a guarantee (in substantially the same form as the form set out in Annex 4 (Form of Parent Company Guarantee)) from a guarantor with the financial standing equal to or better than the Guarantor and the Contractor shall comply with its obligations under clause A16.8; and
 - (b) where the Contractor fails to comply with a request pursuant to clause A16.6, treat that failure as a substantial failure by the Contractor to comply with its obligations; and/or
 - A16.6.2 involves a person that is subject to sanctions pursuant to any of the lists issued or maintained by HM Treasury, the UK's Office of Financial Sanctions Implementation, the Department of Business and Trade and the Export Control Joint Unit, this shall be deemed to be a substantial failure by the *Contractor* to comply with its obligations under the Contract.
- A16.7 Where the *Client* requests a guarantee pursuant to clause A16.6.1(a):

- A16.7.1 the *Contractor* procures the provision of such guarantee no later than 2 weeks immediately following the date on which the relevant change comes into effect (or such later date as is agreed with the *Client* in writing);
- A16.7.2 the *Client* may treat a failure of the *Contractor* to provide such guarantee in accordance with clause A16.7.1 as a substantial failure of the *Contractor* to comply with its obligations; and
- A16.7.3 the counterparties to the guarantee shall be required to execute and deliver to the *Client* a signed Security Aspects Letter.

A17 Conflicts of Interest

- A17.1 The *Contractor* shall take appropriate steps to ensure that neither the *Contractor* nor any *Contractor* Related Party is placed in a position where, in the reasonable opinion of the *Client*:
 - A17.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the *Contractor* and the duties owed to the *Client* under the provisions of the Contract and/or these Defra Conditions; or
 - A17.1.2 the behaviour of the *Contractor* or the *Contractor* Related Party is not in the *Client's* best interest or might adversely affect the *Client's* reputation.
- A17.2 The *Contractor* shall, as soon as reasonably practicable, disclose to the *Client* full particulars of any behaviour which might give rise to an actual or potential conflict.
- A17.3 In exercising its rights or remedies under this clause A17, the *Client* shall:
 - A17.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the nature of the interests that is or may be an actual conflict or potential conflict; and
 - A17.3.2 give all due consideration to and, where appropriate, require the *Contractor* to:
 - (i) procure the termination of the interest or activity that is or may be an actual conflict or potential conflict (including terminating any relevant Subcontractor or procuring the dismissal of any relevant Personnel); and/or
 - (ii) put in place appropriate and reasonable procedures (including ethical walls) for the purposes of managing the interest or activity that is or may be an actual conflict or potential conflict.

A18 Records and Audit Access

- A18.1 The *Contractor* keeps Documents and information, obtained or prepared by the *Contractor* or any Subcontractor in connection with this Contract.
- A18.2 The *Contractor* permits the *Client* and any Audit Agent to examine Documents held or controlled by the *Contractor* or any Subcontractor.
- A18.3 The *Contractor* provides such oral or written explanations as the *Client* and any Audit Agent considers necessary.
- A18.4 The *Contractor* acknowledges that, for the purpose of examining and certifying the *Client's* accounts or any examination pursuant to section 6(1) of the National Audit Act 1983, any Audit Agent may examine Documents held or controlled by the *Contractor* or any Subcontractor and may require the *Contractor* to provide such oral or written explanations as they consider necessary. The *Contractor* promptly complies with any such requirements at their own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Contractor* and the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the *Contractor* is not a function exercisable under the Contract.

A19 Retention and supply of records and data

- A19.1 The *Contractor* shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the *Client* when requested on reasonable notice.

- A19.2 The *Contractor* shall also permit access to relevant records that relate to the contractual obligations to provide the *works* under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes to enable the National Audit Office to carry out:
- A19.2.1 the *Client's* statutory audits and to examine and/or certify the *Client's* annual and interim report and accounts; and
 - A19.2.2 an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources.
- A19.3 With regard to the records made available to the *Client* under clause A19.1 of this clause, and subject to the provisions of clause A3 (Freedom of Information), the *Contractor* shall permit records to be examined and if necessary copied, by the *Client*, as the *Client* may require.
- A19.4 Unless the Contract specifies otherwise the records referred to in this clause shall be retained for a period of at least 6 years from the:
- A19.4.1 end of the Contract;
 - A19.4.2 termination of the Contract; or
 - A19.4.3 final payment,
- whichever occurs latest.
- A19.5 The *Contractor* agrees to respond within ten (10) Business Days to written requests from the *Client* for copies of all documents related to the delivery of the *works* under the Contract submitted to the *Client*, together with suitable identifying documentation for validation against the prices in the People Rates and Prices.

A20 Waiver

- A20.1 The obligations and liabilities of the *Contractor* under the Contract shall not be excluded, limited, modified, qualified, reduced, released, diminished or in any other way affected by:
- A20.1.1 any acknowledgment, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the *Client*, *Service Manager* or any of their agents, or failure to give or make any of these; or
 - A20.1.2 the *Client* or *Service Manager* including the value of any work, materials or goods in any certificate or statement or any interim or final payment or certifying Completion, (where any non-compliance of materials or goods or workmanship with the requirements of the Contract becomes apparent after the date of such certificate, statement or notice).
- A20.2 Any forbearance, relaxation, indulgence or delay ("**Indulgence**") of a party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right, whether against that party or any other person.

A21 Severability

- A21.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
- A21.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in of the Contract, but without invalidating any of the remaining provisions of the same; and
 - A21.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

A22 Assignment

- A22.1 Subject to clause A22.2, the *Client* may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the *Client*;
 - (c) any private sector body which substantially performs the functions of the *Client*; or
 - (d) any private sector body connected with the Project,
- provided that any such assignment, novation or other disposal shall not increase the burden of the *Contractor's* obligations under the Contract.
- A22.2 Any change in the legal status of the *Client* such that it ceases to be a Contracting Authority shall not, subject to clause A22.3, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the *Client*.
- A22.3 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause A22.1 to a body which is not a Contracting Authority or if there is a change in the legal status of the *Client* such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination as a result of a reason identified in R1-R10B of clause 91.1 of the contract which the *Contractor* has in respect of *Client* shall be available to the *Contractor* in respect of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract, or any part thereof, with the prior consent in writing of the *Contractor*.

A23 Continuous Improvement

- A23.1 The *Contractor* shall, throughout the Contract, adopt a policy of continuous improvement in relation to the *works* pursuant to which it will regularly review with the *Client* the *works* and the manner in which it is providing the *works* with a view to reducing the *Client's* costs (including the People Rates) and/or improving the quality and efficiency of the *works*. The *Contractor* and the *Client* will provide to each other any information which may be relevant to assisting in fulfilling these objectives.
- A23.2 Without limiting clause A23.1 and if the *Client* so requires at any point before the Completion Date, the *Contractor* shall produce a Continuous Improvement Plan.
- A23.3 The Continuous Improvement Plan shall be in the format agreed between the Parties and shall contain, as a minimum, proposals in respect of the following:
- A23.3.1 identifying the emergence of relevant new and evolving technologies;
 - A23.3.2 changes in business processes of the *Contractor* or the *Client* and ways of working that would provide cost savings and/or enhanced benefits to the *Client* (such as methods of interaction, Supply Chain efficiencies, reduction in energy consumption and methods of sale);
 - A23.3.3 new or potential improvements to the provision of the *works* and/or *works* including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and *Client* support services in relation to the *works*; and
 - A23.3.4 measuring and reducing the sustainability impacts of the *Contractor's* operations and supply-chains pertaining to the *works* and identifying opportunities to assist the *Client* in meeting their sustainability objectives.
- A23.4 Once a year, the *Contractor* shall review the Continuous Improvement Plan and submit any updates or changes to the *Client* for the *Client's* approval.
- A23.5 Within two weeks of the *Contractor* submitting a Continuous Improvement Plan for acceptance, the *Client* notifies the *Contractor* of the acceptance of the Continuous Improvement Plan or the

reasons for not accepting, and if the *Client* does not respond within two weeks, the Continuous Improvement Plan shall be deemed accepted.

- A23.6 If a proposed Continuous Improvement Plan submitted by the *Contractor* is rejected then the *Contractor* shall, within one week of receipt of notice under clause A23.5, submit a revised Continuous Improvement Plan for acceptance reflecting the changes required.
- A23.7 The *Contractor* shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The *Contractor* shall provide any further information as requested.
- A23.8 Once the proposed Continuous Improvement Plan has been approved by the *Client*, this shall become the Continuous Improvement Plan for the purposes of the Contract and the *Contractor* shall effect any resultant changes in its practices or procedures as may be necessary. Any such change is at the *Contractor's* expense.
- A23.9 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement shall be deemed to be included in the Fee.
- A23.10 Should the *Contractor's* costs in providing the *works* to the *Client* be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the *Client* by way of a consequential and immediate reduction in the Prices and Defined Cost.

A24 Works Continuity and Corporate Resolution Planning:

- A24.1 The Parties shall comply with the obligations set out in Schedule 1 (*Works Continuity Plan and Corporate Resolution Planning*).

A25 Financial distress

- A25.1 In this clause A25 (Financial distress) the following terms shall have the following meanings:

A25.1.1 **"Agreed Credit Rating"** is the credit rating of either:

(i)

(ii) is of a moderate risk for the *Contractor* and for any Guarantor issued by Credit Safe Business Solutions Limited;

A25.1.2 **"Credit Rating"** is the credit rating of the *Contractor*, or any Guarantor issued by a rating agency accepted by the *Client*; and

A25.1.3 **"Financial Distress Event"** is any of the following events:

- (i) issue of a profit warning to a stock exchange or any other public announcement about a material deterioration in its financial position or prospects;
- (ii) it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety;
- (iii) it commits a material breach of its covenants to its lenders; or
- (iv) its financial position or prospects deteriorate to such an extent that it would not meet the credit meeting.

A25.1.4 **"Guarantee"** is a guarantee of the *Contractor's* performance in the form agreed by the *Client*.

- A25.2 The *Contractor* notifies the *Client* within one week if any of the following events occur in relation to the *Contractor* or the Guarantor:

A25.2.1 its Credit Rating falls below the Agreed Credit Rating;

A25.2.2 a further fall in its Credit Rating below the relevant Agreed Credit Rating;

A25.2.3 it anticipates its Credit Rating will fall below the Agreed Credit Rating;

- A25.2.4 a Financial Distress Event; and
 - A25.2.5 it anticipates a Financial Distress Event will occur.
- A25.3 If any of the events listed in clause A25.2 occurs, the *Client* may require the *Contractor* to give to the *Client* an alternative guarantor proposed by the *Contractor* and accepted by the *Client* who (in either case) has a Credit Rating at least equal to the Agreed Credit Rating for the person to whom the event listed in clause A25.2 has occurred.
- A25.4 The *Client* may accept an alternative guarantor proposed by the *Contractor* who does not comply with clause A25.3 if the *Contractor* gives to the *Client* an assurance that the alternative guarantor will so comply within six (6) months of the *Client's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the alternative guarantor during that period in order to demonstrate to the *Client* that it will so comply by the end of that period.
- A25.5 If:
- A25.5.1 the *Contractor* fails to notify the *Client* that an event listed in clause A25.2 has occurred;
 - A25.5.2 any alternative guarantor proposed by the *Contractor* does not comply with clause A25.3;
 - A25.5.3 the *Contractor* does not give to the *Client* an alternative guarantor accepted by the *Client* within four weeks of a request from the *Client* to do so; or
 - A25.5.4 the *Contractor* fails to demonstrate to the *Client* that the alternative guarantor accepted by the *Client* will comply with clause A25.3 within six (6) months of the *Client's* acceptance,
- then, where the *Client* considers (acting reasonably) that such an event could have a material adverse effect on the *Contractor's* ability to comply with its obligations under the contract, the *Client* may treat such failure as a substantial failure (R11) by the *Contractor* to comply with its obligations.
- A26 Workers Protection (Amendment of Equality Act 2010) Act 2023**
- A26.1 The *Contractor* shall comply with and shall ensure that its Personnel comply with the relevant provisions of the Workers Protection (Amendment of Equality Act 2010) Act 2023.

Annex 1

Works Continuity Plan and Corporate Resolution Planning

1. Works Continuity Plan

- 1.1 Within 60 Business Days from the commencement of the Contract, the *Contractor* shall prepare and deliver to the *Client* for the *Client's* written approval a plan, which shall detail the processes and arrangements that the *Contractor* shall follow to:
 - 1.1.1 ensure continuity of the business processes and operations supported by the *works* following any failure or disruption of any element of the *works* (including where caused by an Insolvency Event of the *Contractor*, any Key Sub-Contractor, or any of the *Contractor's* Group including its Guarantor); and
 - 1.1.2 the recovery of the *works* in the event of a Disaster.
- 1.2 The Works Continuity Plan shall:
 - 1.2.1 be divided into four parts:
 - (a) Part A which shall set out general principles applicable to the Works Continuity Plan;
 - (b) Part B which shall relate to business continuity (the "**Business Continuity Plan**");
 - (c) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**");
 - (d) Part D which shall relate to an Insolvency Event of the *Contractor*, any Key Sub-Contractors and/or any member of the *Contractor's* Group (the "**Insolvency Continuity Plan**"); and
 - 1.2.2 unless otherwise required by the *Client* in writing, be based upon and be consistent with the provisions of Paragraphs 2, 3, 4 and 5.
- 1.3 Following receipt of the draft Works Continuity Plan from the *Contractor*, the *Client* shall:
 - 1.3.1 review and comment on the draft Works Continuity Plan as soon as reasonably practicable; and
 - 1.3.2 notify the *Contractor* in writing that it approves or rejects the draft Works Continuity Plan no later than 40 Business Days after the date on which the draft Works Continuity Plan is first delivered to the *Client*.
- 1.4 If the *Client* rejects the draft Works Continuity Plan:
 - 1.4.1 the *Client* shall inform the *Contractor* in writing of its reasons for its rejection; and
 - 1.4.2 the *Contractor* shall then revise the draft Works Continuity Plan (taking reasonable account of the *Client's* comments) and shall re-submit a revised draft Works Continuity Plan to the *Client* for the *Client's* approval within 20 Business Days of the date of the *Client's* notice of rejection. The provisions of Paragraph 1.3 and this Paragraph 1.4 shall apply again to any resubmitted draft Works Continuity Plan, provided that either Party may refer any disputed matters for resolution by the *tribunal* at any time.

2. Works Continuity Plan: Part A – General Principles and Requirements

- 2.1 Part A of the Works Continuity Plan shall:
 - 2.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
 - 2.1.2 provide details of how the invocation of any element of the Works Continuity Plan may impact upon the provision of the *works* provided to the *Client* by Others;
 - 2.1.3 contain an obligation upon the *Contractor* to liaise with the *Client* and (at the *Client's* request) Others with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
 - 2.1.4 detail how the Works Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the *Client* and any Others in each case as notified to the

- Contractor* by the *Client* from time to time;
- 2.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the *Client*;
 - 2.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the *works* and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the provision of the *works* provided by Others;
 - (d) identification of risks arising from an Insolvency Event of the *Contractor*, any Key Sub-Contractors and/or any of the *Contractor's* Group; and
 - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 2.1.7 provide for documentation of processes, including business processes, and procedures;
 - 2.1.8 set out key contact details (including roles and responsibilities) for the *Contractor* (and any Key Sub-Contractors) and for the *Client*;
 - 2.1.9 identify the procedures for reverting to providing the *works* in accordance with the Contract;
 - 2.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 2.1.11 identify the responsibilities (if any) that the *Client* has agreed it will assume in the event of the invocation of the Works Continuity Plan; and
 - 2.1.12 provide for the provision of technical advice and assistance to key contacts at the *Client* as notified by the *Client* from time to time to inform decisions in support of the *Client's* business continuity plans.
- 2.2 The Works Continuity Plan shall be designed so as to ensure that:
- 2.2.1 the *works* are provided in accordance with this Contract at all times during and after the invocation of the Works Continuity Plan;
 - 2.2.2 the adverse impact of any Disaster, service failure, an Insolvency Event of the *Contractor*, any Key Sub-Contractor and/or any of the *Contractor's* Group or disruption on the operations of the *Client* and the provision of the *works*, is minimal as far as reasonably possible;
 - 2.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
 - 2.2.4 there is a process for the management of disaster recovery testing detailed in the Works Continuity Plan.
- 2.3 The Works Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the *works*, to the business processes facilitated by and the business operations supported by the *works*, and/or changes to the *Contractor* Group structure.
- 2.4 The *Contractor* shall not be entitled to any relief from its obligations under the Key Performance Indicators or to recover any cost from the *Client* to the extent that a Disaster occurs as a consequence of any breach by the *Contractor* of this Contract.
- 3. Works Continuity Plan: Part B – Business Continuity**
- Principles and Contents**
- 3.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the provision of the *works* remain supported and to ensure continuity of the provision of the

works including, unless the *Client* expressly states otherwise in writing:

- 3.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the works; and
 - 3.1.2 the steps to be taken by the *Contractor* upon resumption of the works in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 3.2 The Business Continuity Plan shall:
- 3.2.1 address the various possible levels of failures of or disruptions to the works;
 - 3.2.2 set out the works to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the works (such works and steps, the “**Business Continuity Works**”);
 - 3.2.3 specify any applicable Key Performance Indicators with respect to the provision of the Business Continuity Works and details of any agreed relaxation to the Key Performance Indicators in respect of other works during any period of invocation of the Business Continuity Plan; and
 - 3.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

4. **Works Continuity Plan: Part C – Disaster Recovery**

Principles and Contents

- 4.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the *Contractor* ensures continuity of the works following any Disaster or during any period of disruption to the provision of the works with, as far as reasonably possible, minimal adverse impact.
- 4.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 4.3 The Disaster Recovery Plan shall include the following:
 - 4.3.1 the technical design and build specification of the Disaster Recovery System;
 - 4.3.2 details of the procedures and processes to be put in place by the *Contractor* in relation to the Disaster Recovery System and the provision of the Disaster Recovery Works and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (b) backup methodology and details of the *Contractor*’s approach to data back-up and data verification;
 - (c) identification of all potential disaster scenarios;
 - (d) risk analysis;
 - (e) documentation of processes and procedures;
 - (f) hardware configuration details;
 - (g) network planning including details of all relevant data networks and communication links;
 - (h) invocation rules;
 - (i) supply chain management;
 - (j) Management of the supply and use of Equipment, Plant and Materials;
 - (k) Other items notified to the *Contractor* by the *Client* or the *Project Manager* (acting reasonably); and
 - (l) steps to be taken upon resumption of the works to address any prevailing effect of the failure or disruption of the works;
 - 4.3.3 any applicable Key Performance Indicators with respect to the provision of the Disaster Recovery Works and details of any agreed relaxation to the Key Performance Indicators in respect of other works during any period of invocation of the Disaster Recovery Plan;
 - 4.3.4 details of how the *Contractor* shall ensure compliance with health and safety and security standards ensuring that compliance is maintained for any period during

- which the Disaster Recovery Plan is invoked;
 - 4.3.5 access controls to any disaster recovery sites used by the *Contractor* in relation to its obligations pursuant to this Schedule; and
 - 4.3.6 testing and management arrangements.
- 5. **Works Continuity Plan: Part D – Insolvency Continuity Plan**
 - Principles and Contents**
 - 5.1 The Insolvency Continuity Plan shall be designed by the *Contractor* to permit continuity of the provision of the *works* through continued provision of the *works* following an Insolvency Event of the *Contractor*, any Key Sub-*Contractor* any of the *Contractor's* Group with, as far as reasonably possible, minimal adverse impact.
 - 5.2 The Insolvency Continuity Plan shall include the following:
 - 5.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the *works*, including key contact details in respect of the supply chain and key contact details for operational and contract *Contractor's* Personnel, Key Sub-*Contractor* personnel and any member of the *Contractor* Group;
 - 5.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the *Contractor*, Key Sub-*Contractors* and any member of the *Contractor* Group where failure of those dependencies could reasonably have an adverse impact on the *works*;
 - 5.2.3 plans to manage and mitigate identified risks;
 - 5.2.4 details of the roles and responsibilities of the *Contractor*, Key Sub-*Contractors* and/or any member of the *Contractor* Group to minimise and mitigate the effects of an Insolvency Event of such persons on the *works*;
 - 5.2.5 details of the recovery team to be put in place by the *Contractor* (which may include representatives of the *Contractor*, Key Sub-*Contractors* and any member of the *Contractor* Group);
 - 5.2.6 retaining all key personnel; key members of the supply chain (as identified by the *Contractor*, the *Client* or the Project Manager) and the supply and use of all applicable Equipment, Plant and Materials; and
 - 5.2.7 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the *Contractor*.
- 6. **Review and Amendment of the Works Continuity Plan**
 - 6.1 The *Contractor* shall review and update the Works Continuity Plan (and the risk analysis on which it is based):
 - 6.1.1 on a regular basis and as a minimum once every 12 months, or earlier if requested by the *Client* (acting reasonably);
 - 6.1.2 within three calendar months of the Works Continuity Plan (or any part) having been invoked pursuant to Paragraph 8;
 - 6.1.3 within 14 days of a Financial Distress Event;
 - 6.1.4 within 30 days of a Change of Control (unless the *Client* (acting reasonably) agrees to a Change of Control Grace Period, as set out in Paragraph 2.8.2(a), in which case that Change of Control Grace Period will apply); and
 - 6.1.5 where the *Client* requests any additional reviews (over and above those provided for in Paragraphs 6.1.1 to 6.1.4) by notifying the *Contractor* to such effect in writing, whereupon the *Contractor* shall conduct such reviews in accordance with the *Client's* written requirements. Prior to starting its review, the *Contractor* shall provide an accurate written estimate of the total costs payable by the *Client* for the *Client's* approval. The costs of both Parties of any such additional reviews shall be met by the *Client* except that the *Contractor* shall not be entitled to charge the *Client* for any costs that it may incur above any estimate without the *Client's* prior written approval.

- 6.2 Each review of the Works Continuity Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the Works Continuity Plan and shall assess their suitability having regard to any change to the *works* or any underlying business processes and operations facilitated by or supported by the *works* which have taken place since the later of the original approval of the Works Continuity Plan or the last review of the Works Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Works Continuity Plan. The review shall be completed by the *Contractor* within the period required by the Works Continuity Plan or, if no such period is required, within such period as the *Client* shall reasonably require. The *Contractor* shall, within 20 Business Days of the conclusion of each such review of the Works Continuity Plan, provide to the *Client* a report (a "**Review Report**") setting out:
- 6.2.1 the findings of the review;
 - 6.2.2 any changes in the risk profile associated with the *works*; and
 - 6.2.3 the *Contractor's* proposals (the "**Contractor's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Works Continuity Plan following the review detailing the impact (if any and to the extent that the *Contractor* can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any *works* or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the *Contractor's* Proposals, the *Client* shall:
- 6.3.1 review and comment on the Review Report and the *Contractor's* Proposals as soon as reasonably practicable; and
 - 6.3.2 notify the *Contractor* in writing that it approves or rejects the Review Report and the *Contractor's* Proposals no later than 20 Business Days after the date on which they are first delivered to the *Client*.
- 6.4 If the *Client* rejects the Review Report and/or the *Contractor's* Proposals:
- 6.4.1 the *Client* shall inform the *Contractor* in writing of its reasons for its rejection; and
 - 6.4.2 the *Contractor* shall then revise the Review Report and/or the *Contractor's* Proposals as the case may be (taking reasonable account of the *Client's* comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised *Contractor's* Proposals to the *Client* for the *Client's* approval within 20 Business Days of the date of the *Client's* notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and *Contractor's* Proposals, provided that either Party may refer any disputed matters for resolution by the *tribunal* at any time.
- 6.5 The *Contractor* shall as soon as is reasonably practicable after receiving the *Client's* approval of the *Contractor's* Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the *Contractor's* Proposals. Any such change shall be at the *Contractor's* expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the *works*.
- 6.6 All costs relating to the review and/or amendment of the Works Continuity Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall be deemed to be included in the Fee.
- 6.7 Should the *Contractor's* costs in providing the *works* to the *Client* be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the *Client* by way of a consequential and immediate reduction in the Defined Cost and if applicable the People Rates.
- 7. Testing of the Works Continuity Plan**
- 7.1 The *Contractor* shall test the Works Continuity Plan on a regular basis (and in any event not less than once every 12 months). Subject to Paragraph 7.2, the *Client* may require the *Contractor* to conduct additional tests of some or all aspects of the Works Continuity Plan at any time where the *Client* considers it necessary, including where there has been any change

- to the *works* or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Works Continuity Plan.
- 7.2 If the *Client* requires an additional test of the Works Continuity Plan, it shall give the *Contractor* written notice and the *Contractor* shall conduct the test in accordance with the *Client's* requirements and the relevant provisions of the Works Continuity Plan. The *Contractor's* costs of the additional test shall be borne by the *Client* unless the Works Continuity Plan fails the additional test in which case the *Contractor's* costs of that failed test shall be borne by the *Contractor*.
 - 7.3 The *Contractor* shall undertake and manage testing of the Works Continuity Plan in full consultation with the *Client* and shall liaise with the *Client* in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the *Client* in this regard. Each test shall be carried out under the supervision of the *Client* or its nominee.
 - 7.4 The *Contractor* shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the *Client*. Copies of live test data used in any such testing shall be (if so required by the *Client*) destroyed or returned to the *Client* on completion of the test.
 - 7.5 The *Contractor* shall, within 20 Business Days of the conclusion of each test, provide to the *Client* a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the Works Continuity Plan (including the Works Continuity Plan's procedures) revealed by the test; and
 - 7.5.3 the *Contractor's* proposals for remedying any such failures.
 - 7.6 Following each test, the *Contractor* shall take all measures requested by the *Client*, (including requests for the re-testing of the Works Continuity Plan) to remedy any failures in the Works Continuity Plan and such remedial activity and re-testing shall be completed by the *Contractor*, at no additional cost to the *Client*, by the date reasonably required by the *Client* and set out in such notice.
 - 7.7 For the avoidance of doubt, the carrying out of a test of the Works Continuity Plan (including a test of the Works Continuity Plan's procedures) shall not relieve the *Contractor* of any of its obligations under this Contract.
 - 7.8 The *Contractor* shall also perform a test of the Works Continuity Plan in the event of any major reconfiguration of the *works* or as otherwise reasonably requested by the *Client*.
 - 8. Compensation Events**
 - 8.1 The *Contractor* is not entitled to rely on the compensation event provisions under the Contract, if the *Contractor* would not have been impacted by the compensation event had it complied with this Schedule 1 (*Works Continuity Plan and Corporate Resolution Planning*).
 - 9. Invocation of the Works Continuity Plan**
 - 9.1 In the event of a loss of any critical part of the Service or a Disaster, the *Contractor* shall immediately invoke the business continuity and disaster recovery provisions in the Works Continuity Plan, including any linked elements in other parts of the Works Continuity Plan, and shall inform the *Client* promptly of such invocation. In all other instances the *Contractor* shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the *Client*.
 - 9.2 The Insolvency Continuity Plan element of the Works Continuity Plans, including any linked elements in other parts of the Works Continuity Plan, shall be invoked by the *Contractor*:
 - 9.2.1 where an Insolvency Event of a Key Sub-Contractor and/or member of the *Contractor* Group (other than the *Contractor*) could reasonably be expected to adversely affect delivery of the *works*; and/or
 - 9.2.2 where there is an Insolvency Event of the *Contractor* and the insolvency arrangements enable the *Contractor* to invoke the plan;

- 9.3 Subject to clause 8.1, any invocation of the Works Continuity Plan does not give rise to the compensation event provisions under the Contract.

Part B: Corporate Resolution Planning

1. **Service Status and Contractor Status**

- 1.1 This Contract 'is' a Critical Service Contract.
- 1.2 The *Contractor* shall notify the *Client* and the Cabinet Office Markets and *Contractors* Team (Resolution.planning@cabinetoffice.gov.uk) in writing within 5 Business Days of the commencement of the Contract and throughout the term of the Contract within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent *Contractor*.

2. **Provision of Corporate Resolution Planning Information (CRP Information)**

- 2.1 Paragraphs 2 to 4 of this Part B shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the *Contractor* is or becomes a Public Sector Dependent *Contractor*.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
 - 2.2.1 where this Contract is a Critical Service Contract, the *Contractor* shall provide the *Client* with CRP Information within 60 days of the commencement of the Contract; and
 - 2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the *Contractor* is a Public Sector Dependent *Contractor*, it shall provide the *Client* with the CRP Information within 60 days of the date of the *Client*'s request.
- 2.3 The *Contractor* shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
 - 2.3.1 is full, comprehensive, accurate and up to date;
 - 2.3.2 is split into three parts:
 - (a) Exposure Information (Contracts List);
 - (b) Corporate Resolvability Assessment (Structural Review);
 - (c) Financial Information and Commentaryand is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the *Contractor*'s circumstances);
 - 2.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the *Client* to understand and consider the information for approval;
 - 2.3.4 provides a clear description and explanation of the members of the *Contractor* Group that have agreements for goods, *works* or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
 - 2.3.5 complies with the requirements set out at Annex 1 (*Exposure Information (Contracts List)*), Annex 2 (*Corporate Resolvability Assessment (Structural Review)*) and Annex 3 (*Financial Information and Commentary*) respectively.
- 2.4 Following receipt by the *Client* of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the *Client* shall procure that it discusses in good faith the contents of the CRP Information with the *Contractor* and no later than 60 days after the date on which the CRP Information was delivered by the *Contractor* either provide an Assurance to the *Contractor* that the *Client* approves the CRP Information or that the *Client* rejects the CRP Information.
- 2.5 If the *Client* rejects the CRP Information:
 - 2.5.1 *Client* shall (and shall procure that the Cabinet Office Markets and *Contractors*

- Team shall) inform the *Contractor* in writing of its reasons for its rejection; and
- 2.5.2 the *Contractor* shall revise the CRP Information, taking reasonable account of the *Client's* comments, and shall re-submit the CRP Information to the *Client* for approval within 30 days of the date of the *Client's* rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any may refer any disputed matters for resolution by the *tribunal* at any time.
- 2.6 Where the *Contractor* or a member of the Contractor Group has already provided CRP Information to a Department or the Cabinet Office Markets and Contractors Team (or, in the case of a Strategic Contractor, solely to the Cabinet Office Markets and Contractors Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Contractors Team (or, in the case of a Strategic Contractor, solely from the Cabinet Office Markets and Contractors Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the *Contractor* shall not be required to provide the CRP Information under Paragraph 2.2 if it provides a copy of the Valid Assurance to the *Client* on or before the date on which the CRP Information would otherwise have been required.
- 2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
- 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
- 2.7.2 no Change of Control or Financial Distress Events (or events which would be deemed to be a Change of Control or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.
- 2.8 If this Contract is a Critical Service Contract, the *Contractor* shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the *Client*:
- 2.8.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the *Contractor* is relieved of the consequences of the Financial Distress Event under clause A25.
- 2.8.2 within 30 days of a Change of Control unless:
- (a) the *Contractor* requests and the *Client* (acting reasonably) agrees to a Change of Control Grace Period, in the event of which the time period for the *Contractor* to comply with this Paragraph shall be extended as determined by the *Client* (acting reasonably) but shall in any case be no longer than six months after the Change of Control. During a Change of Control Grace Period the *Contractor* shall regularly and fully engage with the *Client* to enable it to understand the nature of the Change of Control and the *Client* shall reserve the right to terminate a Change of Control Grace Period at any time if the *Contractor* fails to comply with this Paragraph; or
- (b) not required pursuant to Paragraph 2.10;
- 2.8.3 within 30 days of the date that:
- (a) the Credit Rating fails to meet any of the criteria specified in Paragraph 2.10; and
- 2.8.4 in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the *Client* (whichever is the earlier), unless:
- (a) updated CRP Information has been provided under any of Paragraphs 2.8.1 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than 12 months previously) within the

timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or

(b) unless not required pursuant to Paragraph 2.10.

- 2.9 Where the *Contractor* is a Public Sector Dependent Contractor and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part B, the Contractor shall provide at the request of the *Client* and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the *Contractor* by the *Client*), the CRP Information to the *Client*.
- 2.10 Where the *Contractor* or the Guarantor of the *Contractor* has a Credit Rating, the *Contractor* will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the *Contractor* is relieved of the consequences of the Financial Distress Event under clause A2 or (ii) the *Contractor* and its Guarantor cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the *Contractor* shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.
- 2.11 Subject to Paragraph 4, where the *Contractor* demonstrates to the reasonable satisfaction of the *Client* that a particular item of CRP Information is highly confidential, the *Contractor* may, having orally disclosed and discussed that information with the *Client*, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the *Contractor* shall promptly provide the relevant information to the *Client* the extent required under Paragraph 2.8.

3. Termination Rights

- 3.1 The *Client* shall be entitled to terminate this Contract if the *Contractor* is required to provide CRP Information under Paragraph 2 of this Part B and either:
- 3.1.1 the *Contractor* fails to provide the CRP Information within 4 months of the commencement of the Contract if this is a Critical Service Contract or otherwise within 4 months of the *Client*'s request; or
- 3.1.2 the *Contractor* fails to obtain an Assurance from the *Client* within 4 months of the date that it was first required to provide the CRP Information under this Contract.

4. Confidentiality and usage of CRP Information

- 4.1 The *Client* agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the *Contractor* and/or members of the Contractor Group on its UK Public Sector Business and/or works in respect of Critical National Infrastructure and to enable contingency planning to maintain service continuity for end users and protect Critical National Infrastructure in such eventuality.
- 4.2 Where the *Client* is the Cabinet Office Markets and Contractors Team, at the *Contractor*'s request, the *Client* shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the *Contractor* containing terms no less stringent than those placed on the *Client* under Paragraph 4.1 of this Part B and Clause 19 (Confidentiality).
- 4.3 The *Contractor* shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the *Client* pursuant to Paragraph 2 of this Part B subject, where necessary, to the *Client* entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the *Contractor* is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the *Contractor* shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality;
- 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:

- (a) summarising the information;
- (b) grouping the information;
- (c) anonymising the information; and
- (d) presenting the information in general terms.

- 4.5 The *Contractor* shall provide the *Client* with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the *Contractor* is legally permitted to do so.

Schedule 6

Scope



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

SCOPE

Schedule 7

The Price List / People Rates

Schedule 8

Appendices (Template Documents)

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Part 1 – Undertakings to the *Client* or Others

The Undertakings to the *Client* or Others (Option X8) is attached here:

(Formed of two parts: part A is the Deed of Warranty from *Contractor* to Beneficiary and part B is the Deed of Warranty from Sub-Contractor to *Client*).

Part 1A - Deed of Warranty from *Contractor* to Beneficiary

DATED

[BENEFICIARY]

(1)

and

LAING O'ROURKE DELIVERY LIMITED

(2)

[and

**THE SECRETARY OF STATE FOR
ENVIRONMENT, FOOD AND RURAL
AFFAIRS**

[(3)]

**DEED OF WARRANTY
for [INSERT PROJECT DESCRIPTION]**

MILLS & REEVE

THIS WARRANTY is made on

BETWEEN:

- (1) **[BENEFICIARY]** [(company number [NUMBER])] whose [registered][principal] office is at [ADDRESS] ("**Beneficiary**" which expression shall include its successors in title and assigns); and
- (2) **LAING O'ROURKE DELIVERY LIMITED** (company number 04309402) whose registered office is at Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN ("**Contractor**")[: and
- (3) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**, acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at Nobel House, 17 Smith Square, London SW1P 3JR ("**Client**" which expression shall include its successors in title and assigns)]¹³.

BACKGROUND:

- (A) [The Beneficiary has entered or shall enter into a contract with the Client for the provision of funding for [INSERT DESCRIPTION] ("**Project**").] [The Beneficiary has entered or shall enter into a contract with the Client for the [purchase][lease] of the whole or part of [INSERT DESCRIPTION] ("**Project**").]
- (B) The Client has entered or shall enter into a contract or contracts with a consultant or consultants for the performance of the services described in the contract or contracts for the Project.
- (C) The Client has entered into a contract with the Contractor dated [INSERT DATE] ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for the Project.
- (D) It is a condition of the Contract that the Contractor gives this Warranty to the Beneficiary.

In consideration of the payment of £1 (a pound) by the Beneficiary to the Contractor (receipt of which the Contractor acknowledges) **IT IS AGREED:**

1 Works

1.1 The Contractor undertakes and warrants to the Beneficiary that:

- 1.1.1 the Contractor has complied and shall comply with the Contractor's obligations under and in connection with the Contract in accordance with it;
- 1.1.2 the Contractor has used and shall use, in the [design and]¹⁴ construction of the Works¹⁵, all the reasonable skill, care and diligence and good up to date practice to be expected of a fully qualified and competent [designer and]

contractor experienced in [designing and] constructing works for projects of a similar size, scope, nature, complexity and timescale to the Project; and

- 1.1.3 the Contractor has the competency to, and has complied and shall comply with the Contractor's obligations as a duty-holder under and in connection with the Construction (Design and Management) Regulations 2015 and the Building Safety Act 2022.

2 Materials and building practices

- 2.1 Subject to clause 1.1.2, the Contractor undertakes and warrants to the Beneficiary that it shall not use or permit to be used in the Works any materials, substance, building practice or technique which:
- a) by their nature or application contravene any British Standard, EU equivalent, code of practice or agrément certificate issued by the British Board of Agrément to the extent that such code of practice or agrément certificate is relevant for the works under this Warranty;
 - b) contravene the recommendations of the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011";
 - c) are generally considered to be deleterious within the building design professions in the UK; or
 - d) are generally known within the construction industry at the time of use to be hazardous to the health and safety of any person and/or which may threaten the long term integrity of the Project.

3 Documents

- 3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, source code and build information for proprietary components and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Contractor or any Subcontractors (whether in existence or to be created) in connection with the Works and all such other documentation as would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Client to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Works.
- 3.2 The Contractor grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, to copy and use the Documents and to reproduce the designs and contents of them for:
- 3.2.1 any purpose relating to the Project and/or the Beneficiary's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance,

modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Beneficiary's interest in the Project; and

- 3.2.2 the extension of the Works or the Project, so that the Beneficiary can interface any extension of the Works or the Project with the existing Works or Project, but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.
- 3.3 The Beneficiary shall be entitled to grant sub-licences under the Beneficiary's licence and both the Beneficiary's licence and any sub-licences shall be transferable to others.
- 3.4 The Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Beneficiary and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Contract and any successors in title to the Beneficiary's business.
- 3.5 Notwithstanding practical completion of the Works or the termination of the Contractor's engagement under the Contract, the Contractor shall give to the Beneficiary any paper copies and electronic copies of the Documents that the Beneficiary reasonably requests. The Contractor shall give these copies to the Beneficiary within seven days of any request, and the Beneficiary shall pay the Contractor's reasonable copying costs. The Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Contractor gives to the Beneficiary.
- 3.6 The Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

4 Insurance¹⁶

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Contractor shall take out and maintain professional indemnity insurance that will cover all of the Services from the date of the Contractor's engagement under the Contract until the date that is 12 years after the date of practical completion of the Project:

4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom; and

4.1.2

- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Contractor's claims record or other act, failure to act or circumstance particular to it, this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.
- 4.3 As and when it is reasonably required to do so by the Beneficiary, the Contractor shall make available for inspection by the Beneficiary documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.4 Subject to clause 4.2, the Contractor shall inform the Beneficiary as soon as reasonably practicable if this insurance ceases to be available to the Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
- 4.4.1 the Beneficiary and the Contractor shall discuss and agree on the best means of protecting themselves; and
- 4.4.2 the Beneficiary may require the Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Contractor. If the Beneficiary exercises this right, subject to clause 4.2, it shall reimburse to the Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.5 If required by the terms of its insurance policy, the Contractor undertakes and warrants that:
- 4.5.1 prior to the execution of this Warranty, it has:
- (i) disclosed the contents of this Warranty to its insurers and brokers; and
- (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
- 4.5.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.

5 Termination and suspension by Contractor¹⁸

- 5.1 For the purposes of this Warranty, "**Another Person**" means the Beneficiary's nominee or an administrator, an administrative receiver or a receiver appointed by the Beneficiary.
- 5.2 The Contractor shall not exercise any right which the Contractor has to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works, unless the Contractor has given at least 31 days' prior written notice to the Client and the Beneficiary specifying:
- 5.2.1 the breach of the Contract which the Contractor considers entitles it to rescind or terminate the Contract or its engagement under the Contract, or to suspend or discontinue the Works; and

- 5.2.2 full details of any amounts owed by and due from the Client to the Contractor under the Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.
- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Beneficiary notifies the Contractor that it or Another Person wishes to enter into a new agreement with the Contractor on the same terms and conditions as the Contract to complete the Contractor's obligations under the Contract in accordance with it:
- 5.3.1 the Contractor shall enter into a new agreement with the Beneficiary or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Contract and, if this happens, the Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
- 5.3.2 if the Contract is terminated in accordance with clause 5.3.1, the Contractor shall not have a claim against the Client arising solely out of the termination; and
- 5.3.3 subject to clause 5.2, if the Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Contractor shall comply with the instructions of the Beneficiary (or Another Person) under the Contract as if it had not been terminated, and the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor all sums owed and due to it for the Works it has [designed and]constructed pursuant to those instructions.
- 5.4 The Beneficiary shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Contractor for the Works it [designs and]constructs from the date of the new agreement, but it shall have no other liability in respect of the Contract except that the Beneficiary shall pay (or shall procure that Another Person shall pay) to the Contractor:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
- 5.4.2 any amounts accrued and unpaid that are owed by and due from the Client to the Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Contract referred to in clause 5.2.1 has been remedied and the Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Client, the rights of the Contractor and the Beneficiary to enter into (and the right of the Beneficiary to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Contractor has given rights relating to the Contract similar to those in clause 5 to more than one person, and more than one person notifies the Contractor that it wishes to enter into a new agreement with the Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 a notice served by the Client;
- 5.6.2 a notice served by the Beneficiary;

5.6.3 a notice served by any other beneficiary; and

all notices that the Contractor receives shall take effect in accordance with this order of priority.]

6 Termination of the Agreement¹⁹

6.1 If the Beneficiary gives written notice to the Client and the Contractor that the Agreement has been rescinded or terminated, at any time within 31 days of giving the notice, the Beneficiary may either:

6.1.1 comply with the obligations of the Client under the Contract and, if this happens, the Contractor shall comply with its obligations and [design and]construct the Works under the Contract, and the Beneficiary shall comply with the obligations of the Client under the Contract, as though the Beneficiary was and always had been the Client under the Contract in the place of the Client; or

6.1.2 enter into (or appoint Another Person to enter into), and require the Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.

6.2 After it has received the notice given under clause 6.1, the Contractor shall comply with the instructions of the Beneficiary (or Another Person), and the Contractor shall enter into a new agreement at the Beneficiary's written request as described in clause 6.1.2.

6.3 The Contractor may treat the Beneficiary's notice under clause 6.1 that the Agreement has been rescinded or terminated as sufficient evidence that this has happened.

6.4 The Client shall not have a claim against the Contractor arising solely out of the Contractor's compliance with the instructions of the Beneficiary (or Another Person) in accordance with clause 6.]

7 Conflict

7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

8.1 In any action, claim or proceedings brought against the Contractor by the Beneficiary, the Contractor may rely on the same limitations as are in the Contract and raise the equivalent rights in defence of liability as it would have if the Beneficiary were named as joint Client in the Contract, provided that the Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Beneficiary is of a different kind or type from that which would have been suffered by the Client

- 8.2 In any action, claim or proceedings brought against the Contractor by the Client, the Client shall not be prevented from recovering its losses because the Contractor will not incur, has not incurred or would not have incurred those losses.
- 8.3 No action or proceeding for any breach of this Warranty shall be commenced by either party against the other after the date that is 12 years after the date of 12 years after the date of practical completion of the Project.

9 Assignment

- 9.1 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty without the consent of the Contractor to:
- 9.1.1 a mortgagee of the Beneficiary; or
 - 9.1.2 any holding, subsidiary or associated company of the Beneficiary within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.
- 9.2 At any time, the Beneficiary may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Contractor on two occasions only. The consent of the Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Beneficiary, the Client, any of the Client's consultants or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Contractor's obligations or liability under the Contract or this Warranty.
- 11.2 The failure or delay of the Beneficiary to exercise or enforce any right under this Warranty shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty. No election to affirm this Warranty by the Beneficiary shall be effective unless it is in writing.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty shall be governed by, and construed and interpreted in accordance with, English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution by electronic means

- 16.1 Each party agrees that the Contractor may execute this Warranty by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the intention to be bound by this Warranty as if signed by the Contractor's manuscript signature.

17 Execution as a deed

- 17.1 This Warranty is executed as a deed and it was delivered when it was dated.

Executed as a deed by **[BENEFICIARY]**
acting by either two directors or one director
and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

The corporate seal of **THE
SECRETARY OF STATE FOR
ENVIRONMENT, FOOD AND RURAL
AFFAIRS** is hereunto affixed and is
authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **LAING O'ROURKE
DELIVERY LIMITED** acting by either two
directors or one director and the company
secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

DATED

**THE SECRETARY OF STATE FOR
ENVIRONMENT, FOOD AND RURAL (1)
AFFAIRS**

and

[SUB-CONTRACTOR] (2)

and

LAING O'ROURKE DELIVERY LIMITED (3)

**DEED OF WARRANTY
for [INSERT PROJECT DESCRIPTION]**

MILLS & REEVE

THIS WARRANTY is made on

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at Nobel House, 17 Smith Square, London, SW1P 3JR ("**Client**") which expression shall include its successors in title and assigns);
- (2) **[SUB-CONTRACTOR]** [(company number [NUMBER])] whose [registered][principal] office is at [ADDRESS] ("**Sub-Contractor**"); and
- (3) **LAING O'ROURKE DELIVERY LIMITED** (company number 04309402) whose registered office is at Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN ("**Contractor**").

BACKGROUND:

- (A) The Client has entered into a contract with [INSERT NAME OF CONTRACTOR] ("**Contractor**") dated [INSERT DATE] ("**Contract**") for the carrying out of the work described in the Contract ("**Works**") for TBC ("**Project**").
- (B) The Contractor has entered into a sub-contract with the Sub-Contractor dated [INSERT DATE] ("**Sub-Contract**") for the carrying out of the [INSERT DESCRIPTION] sub-contract work described in the Sub-Contract ("**Sub-Contract Works**") being part of the Works. It is a condition of the Sub-Contract and of the Contract that the Sub-Contractor gives this Warranty to the Client.

In consideration of the payment of £1 (a pound) by the Client to the Sub-Contractor (receipt of which the Sub-Contractor acknowledges) **IT IS AGREED:**

1 Sub-Contract Works

1.1 The Sub-Contractor undertakes and warrants to the Client that:

- 1.1.1 the Sub-Contractor has complied and shall comply with the Sub-Contractor's obligations under and in connection with the Sub-Contract in accordance with it;
- 1.1.2 the Sub-Contractor has used and shall use, in the [design and]²⁰construction of the Sub-Contract Works, all the reasonable skill, care and diligence and good up to date practice to be expected of a fully qualified and competent [designer and]sub-contractor experienced in [designing and] constructing sub-contract works for projects of a similar size, scope, nature, complexity and timescale to the Project; and
- 1.1.3 the Sub-Contractor has the competency to, and has complied and shall comply with the Sub-Contractor's obligations as a duty-holder under and in connection with the Construction (Design and Management) Regulations 2015 and the Building Safety Act 2022.

2 Materials and building practices

- 2.1 Subject to clause 1.1.2, the Sub-Contractor undertakes and warrants to the Client that it shall not use or permit to be used in the Works any materials, substance, building practice or technique which:
- a) by their nature or application contravene any British Standard, EU equivalent, code of practice or agrément certificate issued by the British Board of Agrément to the extent that such code of practice or agrément certificate is relevant for the works under this Warranty;
 - b) contravene the recommendations of the British Council for Offices' publication: "Good Practice in the Selection of Construction Materials 2011";
 - c) are generally considered to be deleterious within the building design professions in the UK; or
 - d) are generally known within the construction industry at the time of use to be hazardous to the health and safety of any person and/or which may threaten the long term integrity of the Project.

3 Documents

- 3.1 For the purposes of this Warranty, "**Documents**" means any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, source code and build information for proprietary components and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual "cloud", in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the Sub-Contractor or any sub-sub-contractors (whether in existence or to be created) in connection with the Works and all such other documentation as would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Employer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Works.
- 3.2 The Sub-Contractor grants to the Client an irrevocable, royalty-free and non-exclusive licence, such licence to remain in full force and effect notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, to copy and use the Documents and to reproduce the designs and contents of them for:
- 3.2.1 any purpose relating to the Project and/or the Client's interest in the Project including, but not limited to, the advertisement, alteration, building information modelling, completion, construction, demolition, design, development, disposal, fitting-out, funding, letting, maintenance, modification, promotion, reconstruction, refurbishment, reinstatement, repair, sale and use of the Project and/or the Client's interest in the Project; and
 - 3.2.2 the extension of the Works or the Project, so that the Client can interface any extension of the Works or the Project with the existing Works or Project,

but the licence shall not include a licence to reproduce the designs in the Documents for any extension of the Works or the Project.

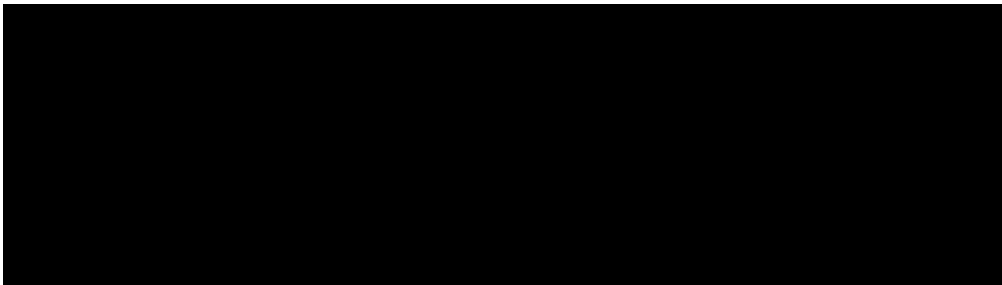
- 3.3 The Client shall be entitled to grant sub-licences under the Client's licence and both the Client's licence and any sub-licences shall be transferable to others.
- 3.4 The Sub-Contractor undertakes and warrants that it shall procure that each individual author of the Documents, on or before practical completion of the Sub-Contract Works or the Project, signs a waiver in respect of the Documents prepared by the author, unconditionally and irrevocably waiving all moral rights to which the author may now or in the future be entitled under the Copyright, Designs and Patents Act 1988 and all similar legislation in force from time to time anywhere in the world. This waiver shall be made in favour of the Client and it shall include any sub-licensees and assignees under clause 3.3, any assignees under clause 9, any successors in title to the copyright in the design under the Sub-Contract and any successors in title to the Client's business.
- 3.5 Notwithstanding practical completion of the Sub-Contract Works or the termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor shall give to the Client any paper copies and electronic copies of the Documents that the Client reasonably requests. The Sub-Contractor shall give these copies to the Client within seven days of any request, and the Client shall pay the Sub-Contractor's reasonable copying costs. The Sub-Contractor shall provide any password, code or other data required to access, decrypt or reproduce any electronic copies of the Documents that the Sub-Contractor gives to the Client.
- 3.6 The Sub-Contractor shall not be liable for any use of the Documents for any purpose other than the purpose they were prepared for.

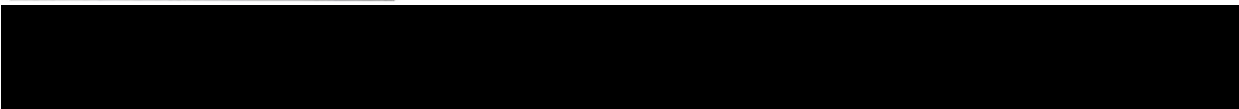
4 Insurance²¹

- 4.1 Provided that it is available at reasonable premium rates and on reasonable commercial terms, the Sub-Contractor shall take out and maintain [professional indemnity][product liability] insurance [that will cover all of the Services]from the date of the Sub-Contractor's engagement under the Sub-Contract until the date that is 12 years after the date of practical completion of the Project:

4.1.1 with a well-established insurance company or underwriter of good repute based in the United Kingdom; and

4.1.2



- 4.2 If insurers require the payment of any increased or additional premiums, or offer insurance on terms more onerous than those usually offered, as a result of the Sub-Contractor's claims record or other act, failure to act or circumstance particular to it,
- 

this shall be deemed to be within reasonable rates and terms for the purposes of this Warranty.

- 4.3 As and when it is reasonably required to do so by the Client, the Sub-Contractor shall make available for inspection by the Client documentary evidence that the insurance is being maintained in accordance with this Warranty.
- 4.4 Subject to clause 4.2, the Sub-Contractor shall inform the Client as soon as reasonably practicable if this insurance ceases to be available to the Sub-Contractor at reasonable premium rates or on reasonable commercial terms. If this happens:
- 4.4.1 the Client and the Sub-Contractor shall discuss and agree on the best means of protecting themselves; and
- 4.4.2 the Client may require the Sub-Contractor to take out and maintain insurance at the best premium rates and on the best commercial terms available to the Sub-Contractor. If the Client exercises this right, subject to clause 4.2, it shall reimburse to the Sub-Contractor the difference between the premium paid and the premium that would have been reasonable.
- 4.5 If required by the terms of its insurance policy, the Sub-Contractor undertakes and warrants that:
- 4.5.1 prior to the execution of this Warranty, it has:
- (i) disclosed the contents of this Warranty to its insurers and brokers; and
- (ii) received confirmation from its insurers and brokers that the terms of this Warranty are covered by the terms of the insurance policy; and
- 4.5.2 it shall disclose the contents of this Warranty to its insurers and brokers when it renews its insurance.

5 Termination and suspension by Sub-Contractor²³

- 5.1 For the purposes of this Warranty, "**Another Person**" means the Client's nominee or an administrator, an administrative receiver or a receiver appointed by the Client.
- 5.2 The Sub-Contractor shall not exercise any right which the Sub-Contractor has to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works, unless the Sub-Contractor has given at least 31 days' prior written notice to the Client specifying:
- 5.2.1 the breach of the Sub-Contract which the Sub-Contractor considers entitles it to rescind or terminate the Sub-Contract or its engagement under the Sub-Contract, or to suspend or discontinue the Sub-Contract Works; and
- 5.2.2 full details of any amounts owed by and due from the Contractor to the Sub-Contractor under the Sub-Contract for the last three outstanding payments covering the three payment periods before that in which the notice is given.

- 5.3 Within 31 days of receipt of a notice under clause 5.2, if the Client notifies the Sub-Contractor that it or Another Person wishes to enter into a new agreement with the Sub-Contractor on the same terms and conditions as the Sub-Contract to complete the Sub-Contractor's obligations under the Sub-Contract in accordance with it:
- 5.3.1 the Sub-Contractor shall enter into a new agreement with the Client or Another Person subject to clause 5.4, but otherwise on the same terms and conditions as the Sub-Contract and, if this happens, the Sub-Contract shall terminate but, subject to clause 5.3.2, without prejudice to the accrued rights of the parties;
 - 5.3.2 if the Sub-Contract is terminated in accordance with clause 5.3.1, the Sub-Contractor shall not have a claim against the Contractor arising solely out of the termination; and
 - 5.3.3 subject to clause 5.2, if the Sub-Contract has been terminated in accordance with clause 5.3.1, pending entry into the new agreement, the Sub-Contractor shall comply with the instructions of the Client (or Another Person) under the Sub-Contract as if it had not been terminated, and the Client shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor all sums owed and due to it for the Sub-Contract Works it has [designed and]constructed pursuant to those instructions.
- 5.4 The Client shall be liable (or shall procure that Another Person shall be liable) under the new agreement to pay the Sub-Contractor for the Sub-Contract Works it [designs and]constructs from the date of the new agreement, but it shall have no other liability in respect of the Sub-Contract except that the Client shall pay (or shall procure that Another Person shall pay) to the Sub-Contractor:
- 5.4.1 any amounts referred to in clause 5.2.2 and detailed in the notice given under clause 5.2; and
 - 5.4.2 any amounts accrued and unpaid that are owed by and due from the Contractor to the Sub-Contractor for the period from the date of the last payment referred to in clause 5.2.2 until the date of the new agreement.
- 5.5 If the breach of the Sub-Contract referred to in clause 5.2.1 has been remedied and the Sub-Contractor has withdrawn unreservedly the notice it gave under clause 5.2 without making any claim against the Contractor, the rights of the Sub-Contractor and the Client to enter into (and the right of the Client to appoint Another Person to enter into) a new agreement shall cease.
- 5.6 If the Sub-Contractor has given rights relating to the Sub-Contract similar to those in clause 5 to more than one person, and more than one person notifies the Sub-Contractor that it wishes to enter into a new agreement with the Sub-Contractor in accordance with those rights, the order of priority shall be (with the highest priority first and the lowest last):
- 5.6.1 a notice served by the Client;
 - 5.6.2 a notice served by a funder;
 - 5.6.3 a notice served by any other Client; and

all notices that the Sub-Contractor receives shall take effect in accordance with this order of priority.]

6 Termination of the Contract²⁴

- 6.1 If the Client gives written notice to the Contractor and the Sub-Contractor that the Contract has been rescinded or terminated, at any time within 31 days of giving the notice, the Client may either:
- 6.1.1 comply with the obligations of the Contractor under the Sub-Contract and, if this happens, the Sub-Contractor shall comply with its obligations and [design and]construct the Sub-Contract Works under the Sub-Contract, and the Client shall comply with the obligations of the Contractor under the Sub-Contract, as though the Client was and always had been the employer under the Sub-Contract in the place of the Contractor; or
 - 6.1.2 enter into (or appoint Another Person to enter into), and require the Sub-Contractor to enter into, a new agreement as if clauses 5.1 to 5.3 applied and references in clause 5.3 to the notice under clause 5.2 were references to the notice under clause 6.1, and the provisions of clauses 5.1 to 5.6 shall apply as appropriate.
- 6.2 After it has received the notice given under clause 6.1, the Sub-Contractor shall comply with the instructions of the Client (or Another Person), and the Sub-Contractor shall enter into a new agreement at the Client's written request as described in clause 6.1.2.
- 6.3 The Sub-Contractor may treat the Client's notice under clause 6.1 that the Contract has been rescinded or terminated as sufficient evidence that this has happened.
- 6.4 The Contractor shall not have a claim against the Sub-Contractor arising solely out of the Sub-Contractor's compliance with the instructions of the Client (or Another Person) in accordance with clause 6.]

7 Conflict

- 7.1 If there is any conflict between the terms and conditions of this Warranty and the terms and conditions of the Sub-Contract, the terms and conditions of this Warranty shall have priority.

8 Limitation

- 8.1 In any action, claim or proceedings brought against the Sub-Contractor by the Client, the Sub-Contractor may rely on the same limitations as are in the Sub-Contract and raise the equivalent rights in defence of liability as it would have if the Client were named as joint employer in the Sub-Contract, provided that the Sub-Contractor shall not be entitled to raise in defence rights of abatement, set-off or counterclaim or raise a defence that a loss suffered by the Client is of a different kind or type from that which would have been suffered by the Contractor.
- 8.2 In any action, claim or proceedings brought against the Sub-Contractor by the Client, the Client shall not be prevented from recovering its losses because the Contractor will not incur, has not incurred or would not have incurred those losses.

- 8.3 No action or proceeding for any breach of this Warranty shall be commenced by either party against the other after the date that is 12 years after the date of 12 years after the date of practical completion of the Project.

9 Assignment

- 9.1 At any time, the Client may assign or transfer all or any of its benefit under this Warranty without the consent of the Sub-Contractor to:

9.1.1 a mortgagee of the Client; or

9.1.2 any holding, subsidiary or associated company of the Client within the meaning of sections 1159 or 1162 Companies Act 2006 and/or section 435 Insolvency Act 1986, including any such holding, subsidiary or associated company which becomes a legal entity and/or is incorporated after the date of this Warranty.

- 9.2 At any time, the Client may assign or transfer all or any of its benefit under this Warranty to any person not referred to in clause 9.1 without the consent of the Sub-Contractor on two occasions only. The consent of the Sub-Contractor, which shall not be delayed or withheld unreasonably, shall be required for any further assignments or transfers.

10 Contracts (Rights of Third Parties) Act 1999

- 10.1 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Warranty and nothing in it, unless stated expressly, confers or purports to confer on any third party any benefit or any right to enforce any of its terms or conditions.

11 Non-waiver

- 11.1 No acknowledgement, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the Client, any of the Client's or the Contractor's consultants, the Contractor or any of their agents, or failure to give or make any of these, shall exclude, limit, modify, qualify or reduce the Sub-Contractor's obligations or liability under the Sub-Contract or this Warranty.

- 11.2 The failure or delay of the Client to exercise or enforce any right under this Warranty shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter, or constitute an election to affirm this Warranty. No election to affirm this Warranty by the Client shall be effective unless it is in writing.

12 Severability

- 12.1 If any provision of this Warranty is declared to be unenforceable, invalid or illegal by the decision-maker in any dispute-resolution process to which it is subject, that provision shall be severed from this Warranty and its unenforceability, invalidity or illegality shall not prejudice or affect the enforceability, validity or legality of the remaining provisions of this Warranty.

13 Counterparts

- 13.1 This Warranty may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each party shall constitute a complete original of this Warranty for all purposes.

14 Notices

- 14.1 Any written notice or communication given under this Warranty shall be given properly if it is delivered by hand or sent by Royal Mail special delivery to a party at its address at the beginning of this Warranty or another address which a party may specify by written notice to the other parties from time to time.
- 14.2 A notice shall be deemed to have been received on the day of delivery if it is delivered by hand and on the second working day after the day of posting if it is sent by Royal Mail special delivery.

15 Governing law, dispute resolution and jurisdiction

- 15.1 This Warranty shall be governed by, and construed and interpreted in accordance with, English law.
- 15.2 The parties agree to submit any dispute or difference between them arising out of, or in connection with, this Warranty to the exclusive jurisdiction of the English courts, except for the purpose of enforcement proceedings in respect of any judgment or award of the English courts in another jurisdiction.

16 Execution by electronic means

- 16.1 Each party agrees that the Contractor may execute this Warranty by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the intention to be bound by this Warranty as if signed by the Contractor's manuscript signature.

17 Execution as a deed

- 17.1 This Warranty is executed as a deed and it was delivered when it was dated.

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **[SUB-CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **LAING O'ROURKE DELIVERY LIMITED** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Part 2 – Vesting Agreements

The vesting agreements are attached here:

(Formed of two parts: part A is the Vesting Agreement between the *Client* and *Contractor* and part B is the Vesting Agreement between the *Client*, *Contractor* and Sub-Contractor).

DATED _____

**THE SECRETARY OF STATE FOR (1)
ENVIRONMENT, FOOD AND RURAL
AFFAIRS**

and

LAING O'ROURKE DELIVERY LIMITED (2)

VESTING AGREEMENT

**relating to
[INSERT PROJECT DESCRIPTION]**

MILLS & REEVE

THIS AGREEMENT is made on

BETWEEN

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**, acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at Nobel House, 17 Smith Square, London SW1P 3JR ("**Client**" which expression shall include its successors in title and assigns); and
- (2) **LAING O'ROURKE DELIVERY LIMITED** of Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN (company number 04309402) ("**Contractor**").

BACKGROUND

- (A) By a contract between the Contractor and the Client dated [INSERT DATE] ("**Main Contract**") the Contractor agreed to provide the works ("**Main Contract Works**") as more particularly described in the Main Contract.
- (B) The Contractor wishes to be paid in respect of certain goods and materials intended for the Main Contract Works which are off-site and specified in the Schedule attached to this Agreement ("**Listed Items**") before delivery to or adjacent to [INSERT DESCRIPTION]("**Site**").
- (C) This Agreement is supplemental to the Main Contract and is referred to in [INSERT CROSS REFERENCE] which forms part of the Main Contract.

IN CONSIDERATION OF the Client's agreement to include in [the next certified payment under the Main Contract] the sum stated in the Schedule to this Agreement in respect of the Listed Items the Parties agree as follows:

- 1 The Contractor warrants, certifies and undertakes to the Client that, at no cost to the Client, the Listed Items:
 - 1.1 have been set apart and stored separately in a designated area at the premises described in the attached Schedule in conditions suitable for their type;
 - 1.2 have been clearly and visibly marked individually or in sets, in a manner agreed between the Parties, and in a way that such marks will remain legible until they are delivered to (or adjacent to) the Site;
 - 1.3 are securely stored, protected and preserved from and against loss, deterioration and damage howsoever caused, to the Client's satisfaction;
 - 1.4 are the Contractor's absolute and unencumbered property (and for the purposes of this Agreement this is deemed to include, without limitation, that the Listed Items are free from charge, lien, pledge, reservation or restriction of title for any party or person) and that the Contractor is able to pass title in the Listed Items absolutely and further that the Sub-Contractor shall, if requested by the Client, provide to the Client documentary evidence to demonstrate the same;
 - 1.5 are in every respect in accordance with the requirements of the Main Contract and the Contract and are free from defects. In the event that they are not in

accordance with the Contract, the Contractor acknowledges that the Contractor (subject to receipt of the Client's written approval, which shall not be unreasonably withheld or delayed) and/or the Client may reject them and instruct the Contractor that they shall immediately re-vest in the Sub-Contractor and be entirely at the Contractor's risk; and

- 1.6 are and shall remain, at the Contractor's cost, insured against all loss and damage howsoever caused to the full replacement value under a policy of insurance protecting the Contractor's interests as well as the Client's interests, jointly in the Contractor's and the Client's names during the period from the date of payment by the Client to the Contractor [in the next certified payment as referred to above to] the date of delivery of the Listed Items to (or adjacent to) the Site. Upon request by the Client the Contractor shall immediately provide the Client, with a copy of the relevant insurance policy and/or allow the Client to inspect the original insurance policy that effects such insurance together with evidence that the Client is endorsed on the insurance policy as an interested party therein and that such insurance remains in place and that all due premiums have been paid. There shall be no variation to the terms of the said insurance policy without the Client's prior written consent. The Contractor undertakes to the Client that they will comply with all the terms and conditions of the said insurance and the Contractor shall, without prejudice to the generality of the foregoing, diligently proceed with any claims under such policy.
- 2 All proprietary rights in the Listed Items shall, subject to the right of rejection under clause 1.5 of this Agreement immediately become the absolute and unencumbered property of the Client upon payment by the Client to the Contractor in the [next certified payment] as referred to above. At the time of payment by the Client, the Parties agree that the Contractor, suppliers, servants and agents (together known as a **Contractor Related Party**) shall have no property in any part or all of the Listed Items, no claim to part or all of the Listed Items and no lien or charge over part or all of the Listed Items.
- 3 The Client and the Client's servants or agents may at any time enter the premises named in the attached Schedule to this Agreement for the purpose of inspecting or removing the Listed Items and /or inspecting the suitability of the premises for the storage of the Listed Items. If the Client and/or the Client's servants or agents advise the Contractor that the premises and/or storage arrangements are not suitable, the Contractor shall, at no cost to the Client immediately arrange for the Listed Items to be stored in accordance with the terms of this Agreement.
- 4 Without prejudice to any other right or remedies that the Client may have, the Contractor acknowledge and agree that damages alone would not be an adequate remedy for any breach of the terms of this. Accordingly, the Client shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement in particular failure or refusal of the Contractor to allow the Client to enter the premises named in the attached Schedule to this Agreement for the purpose of removing or inspecting the Listed Items.
- 5 The Contractor shall ensure that the Listed Items are properly and securely delivered to (or adjacent to) the Site in accordance with the Main Contract including the agreed programme for the Main Contract Works, or in accordance with the Client's reasonable instructions.

- 6 The Contractor shall not without the Client's prior written consent, remove or cause or permit the Listed Items to be moved or removed from the premises named in the Schedule to this Agreement except for delivery to the Site.
- 7 In the event of the termination of the Main Contract for any reason (including, without limitation, the Contractor's insolvency or breach of contract), the Contractor shall, at the Contractor's cost, deliver the Listed Items to (or adjacent to) the Site or to an alternative reasonable location for the purposes of storage, as instructed by the Client. If the Contractor fails to promptly perform that delivery, the Client may enter any premises and, at the Contractor's cost, collect the Listed Items and take them to (or adjacent to) the Site or to any reasonable location for the purposes of storage and the cost of such collection and storage shall be borne by the Contractor and may be deducted from payments otherwise due.
- 8 Nothing contained in this Agreement or the Main Contract or any payment that may be made to the Contractor in respect of the Listed Items shall be taken as any approval by the Client that the Listed Items are in accordance with the Main Contract.
- 9 The Contractor acknowledges that the Client is relying on the statements confirmed in this Agreement when processing payments under the Main Contract.

For the purposes of this Agreement, the Parties have agreed that:

- 10 A person who is not a party to this Agreement (save for any permitted assignee) shall not have any rights under or in connection with it save that the Client may assign the benefit of this Deed without the consent of the Contractor. Any reference to the Client in this Agreement includes the Client's permitted assignees, as the case may be.
- 11 Any notice sent under this Agreement shall be sent in accordance with the Main Contract.
- 12 This Agreement is without prejudice to the terms of the Main Contract which shall continue to be binding and of full effect and shall not be amended, waived or affected by this Agreement.
- 13 Without prejudice to the previous paragraph of this Agreement, the Contractor and the shall indemnify and hold the Client harmless from all costs, claims, demands, losses and expenses of whatsoever nature arising from any breach or non-observance of any of the terms contained in this Agreement or any warranty given pursuant to this Agreement.
- 14 The bankruptcy, liquidation, receivership, administration, other analogous proceeding or insolvency of the Contractor shall not in any way prejudice the Client's rights of ownership in the Listed Items
- 15 This Agreement is subject to and to be construed in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English courts.

IN WITNESS whereof this Agreement has been executed and delivered as a Deed on the day and year first before written.

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **LAING O'ROURKE DELIVERY LIMITED** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Schedule

The Listed Items set out below are held at [INSERT DESCRIPTION] (“**premises**”)

Listed Items

1 [INSERT Listed Items]

2 [INSERT]

The sum in respect of the Listed Items is £[INSERT].

DATED _____

THE SECRETARY OF STATE FOR (1)
ENVIRONMENT, FOOD AND RURAL
AFFAIRS

and

LAING O'ROURKE DELIVERY LIMITED (2)

and

[SUB-CONTRACTOR] (3)

VESTING AGREEMENT

relating to
[INSERT PROJECT DESCRIPTION]

MILLS & REEVE

THIS AGREEMENT dated

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**, acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at Nobel House, 17 Smith Square, London SW1P 3JR ("**Client**" which expression shall include its successors in title and assigns); and
- (2) **LAING O'ROURKE DELIVERY LIMITED** of Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN (company number 04309402) ("**Contractor**"); and
- (3) [SUB-CONTRACTOR] of [INSERT] (Registered in England No. [INSERT]) ("**Sub-Contractor**").

BACKGROUND

- (A) By a contract between the Contractor and the Client dated [INSERT DATE] ("**Main Contract**") the Contractor agreed to provide the works ("**Main Contract Works**") as more particularly described in the Main Contract.
- (B) The Contractor wishes to be paid in respect of certain goods and materials intended for the works which are off-site and specified in the Schedule attached to this Agreement ("**Listed Items**") before delivery to or adjacent to [INSERT DESCRIPTION] ("**Site**").
- (C) The Contractor has entered into a sub-contract dated [INSERT DATE] with the Sub-Contractor for (inter alia) the [design / manufacture / supply / [INSERT OTHER DESCRIPTION]] of the Listed Items ("**Sub-Contract**").
- (D) This Agreement is supplemental to the Main Contract and is referred to in [INSERT CROSS REFERENCE] which forms part of the Main Contract.

IN CONSIDERATION OF the Client's agreement to include in [the next certified payment under the Main Contract] the sum stated in the Schedule to this Agreement in respect of the Listed Items the Parties agree as follows:

- 1 The Contractor and Sub-Contractor jointly and severally warrant, certify and undertake to the Client that, at no cost to the Client, the Listed Items:
 - 1.1 have been set apart and stored separately in a designated area at the premises described in the attached Schedule in conditions suitable for their type;
 - 1.2 have been clearly and visibly marked individually or in sets, in a manner agreed between the Parties, and in a way that such marks will remain legible until they are delivered to (or adjacent to) the Site;
 - 1.3 are securely stored, protected and preserved from and against loss, deterioration and damage howsoever caused, to the Client's satisfaction;
 - 1.4 are the Sub-Contractor's absolute and unencumbered property (and for the purposes of this Agreement this is deemed to include, without limitation, that

the Listed Items are free from charge, lien, pledge, reservation or restriction of title for any party or person) and that the Sub-Contractor is able to pass title in the Listed Items absolutely and further that the Sub-Contractor shall, if requested by the Client, provide to the Client documentary evidence to demonstrate the same;

- 1.5 are in every respect in accordance with the requirements of the Main Contract and the Contract and are free from defects. In the event that they are not in accordance with the Contract, the Sub-Contractor acknowledges that the Contractor (subject to receipt of the Client's written approval, which shall not be unreasonably withheld or delayed) and/or the Client may reject them and instruct the Sub-Contractor that they shall immediately re-vest in the Sub-Contractor and be entirely at the Sub-Contractor's risk; and
 - 1.6 are and shall remain, at the Sub-Contractor's cost, insured against all loss and damage howsoever caused to the full replacement value under a policy of insurance protecting the Sub-Contractor's interests as well as both the Contractor's interests and the Client's interests, jointly in the Sub-Contractor's, the Contractor's and the Client's names during the period from the date of payment by the Client to the Contractor [in the next certified payment as referred to above to] the date of delivery of the Listed Items to (or adjacent to) the Site. Upon request by the Client, the Sub-Contractor shall immediately provide the Client, with a copy of the relevant insurance policy and/or allow the Client to inspect the original insurance policy that effects such insurance together with evidence that the Client is endorsed on the insurance policy as an interested party therein and that such insurance remains in place and that all due premiums have been paid. There shall be no variation to the terms of the said insurance policy without the Client's prior written consent. Both the Contractor and the Sub-Contractor undertake to the Client that they will comply with all the terms and conditions of the said insurance and the Contractor and Sub-Contractor shall, without prejudice to the generality of the foregoing, diligently proceed with any claims under such policy.
- 2 All proprietary rights in the Listed Items shall, subject to the right of rejection under clause 1.5 of this Agreement immediately become the absolute and unencumbered property of the Client upon payment by the Client to the Contractor in the [next certified payment] as referred to above. At the time of payment by the Client, the Parties agree that the Contractor, the Contractor's sub-contractors, suppliers, servants and agents (together known as a **Contractor Related Party**) and/or the Sub-Contractor, the Sub-Contractor's, suppliers, servants and agents and any other third party (together known as a **Sub-Contractor Related Party**) shall have no property in any part or all of the Listed Items, no claim to part or all of the Listed Items and no lien or charge over part or all of the Listed Items and in addition the Contractor undertakes to the Client that it shall not:
- 2.1 exercise any right or remedy it may have by reason of the performance of its obligations under this Agreement including (without limitation), any right or remedy it may have in respect of reimbursement, subrogation against the Sub-Contractor and/or a Sub-Contractor Related Party in relation to the Listed Items;
 - 2.2 save where directed by the Client, prove in the liquidation or bankruptcy of the Sub-Contractor and/or the relevant Sub-Contractor Related Party or have or share in the benefit of any composition or voluntary arrangement which the Sub-Contractor and/or the relevant Sub-Contractor Related Party may enter

into with its creditors in relation to the Listed Items. The Contractor also undertakes to the Client that it will notify the Client within 7 days of making any claim or counterclaim against the Sub-Contractor and/or a Sub-Contractor Related Party in relation to the Listed Items; and

- 2.3 demand or accept repayment of any sums from time to time due to the Contractor from the Sub-Contractor and/or the Sub-Contractor Related Party in relation to the Listed Items (save in relation to defects or alleged defects in the Listed Items) or accept or dispose of any security or encumbrance in respect of the same.
- 3 The Client and the Client's servants or agents may at any time enter the premises named in the attached Schedule to this Agreement for the purpose of inspecting or removing the Listed Items and /or inspecting the suitability of the premises for the storage of the Listed Items. If the Client and/or the Client's servants or agents advise the Contractor and Sub-Contractor that the premises and/or storage arrangements are not suitable, the Contractor and the Sub-Contractor shall, at no cost to the Client immediately arrange for the Listed Items to be stored in accordance with the terms of this Agreement.
- 4 Without prejudice to any other right or remedies that the Client may have, the Contractor and the Sub-Contractor acknowledge and agree that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by either the Contractor or the Sub-Contractor. Accordingly, the Client shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement in particular failure or refusal of either the Contractor or Sub-Contractor to allow the Client to enter the premises named in the attached Schedule to this Agreement for the purpose of removing or inspecting the Listed Items.
- 5 The Contractor and Sub-Contractor shall ensure that the Listed Items are properly and securely delivered to (or adjacent to) the Site in accordance with the Main Contract including the agreed programme for the works, or in accordance with the Client's reasonable instructions.
- 6 The Contractor and Sub-Contractor shall not without the Client's prior written consent, remove or cause or permit the Listed Items to be moved or removed from the premises named in the Schedule to this Agreement except for delivery to the Site.
- 7 In the event of the termination of the Main Contract or the Sub-Contract for any reason (including, without limitation, the Sub-Contractor's insolvency or breach of contract), the Sub-Contractor shall, at the Sub-Contractor's cost, deliver the Listed Items to (or adjacent to) the Site or to an alternative reasonable location for the purposes of storage, as instructed by the Client. If the Sub-Contractor fails to promptly perform that delivery, the Client may enter any premises and, at the Sub-Contractor's cost, collect the Listed Items and take them to (or adjacent to) the Site or to any reasonable location for the purposes of storage and the cost of such collection and storage shall be borne by the Sub-Contractor and may be deducted from payments otherwise due.
- 8 Nothing contained in this Agreement or the Main Contract or the Sub-Contract or any payment that may be made to the Contractor and/or the Sub-Contractor in respect of the Listed Items shall be taken as any approval by the Client that the Listed Items are in accordance with the Main Contract and/or the Sub-Contract.

- 9 The Contractor and the Sub-Contractor acknowledge that the Client is relying on the statements confirmed in this Agreement when processing payments under the Main Contract and that the Contractor is relying on such statements when processing payments under the Sub-Contract.

For the purposes of this Agreement, the Parties have agreed that:

- 10 A person who is not a party to this Agreement (save for any permitted assignee) shall not have any rights under or in connection with it save that the Client may assign the benefit of this Deed without the consent of the Contractor and/or the Sub-Contractor. Any reference to the Client in this Agreement includes the Client's permitted assignees, as the case may be.
- 11 Any notice sent under this Agreement shall be sent in accordance with the Main Contract and/or the Sub-Contract, as the case may be.
- 12 This Agreement is without prejudice to the terms of the Main Contract or the Sub-Contract as the case may be, which shall continue to be binding and of full effect and shall not be amended, waived or affected by this Agreement.
- 13 Without prejudice to the previous paragraph of this Agreement, the Contractor and the Sub-Contractor shall jointly and severally indemnify and hold the Client harmless from all costs, claims, demands, losses and expenses of whatsoever nature arising from any breach or non-observance of any of the terms contained in this Agreement or any warranty given pursuant to this Agreement.
- 14 The bankruptcy, liquidation, receivership, administration, other analogous proceeding or insolvency of the Contractor and/or the Sub-Contractor shall not in any way prejudice the Client's rights of ownership in the Listed Items.
- 15 This Agreement is subject to and to be construed in accordance with English Law and the parties submit to the non-exclusive jurisdiction of the English courts.

IN WITNESS whereof this Agreement has been executed and delivered as a Deed on the day and year first before written.

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **LAING O'ROURKE
DELIVERY LIMITED** acting by either two
directors or one director and the company
secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **[SUB-
CONTRACTOR]** acting by either two
directors or one director and the
company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Schedule

The Listed Items set out below are held at [INSERT DESCRIPTION] (“premises”)

Listed Items

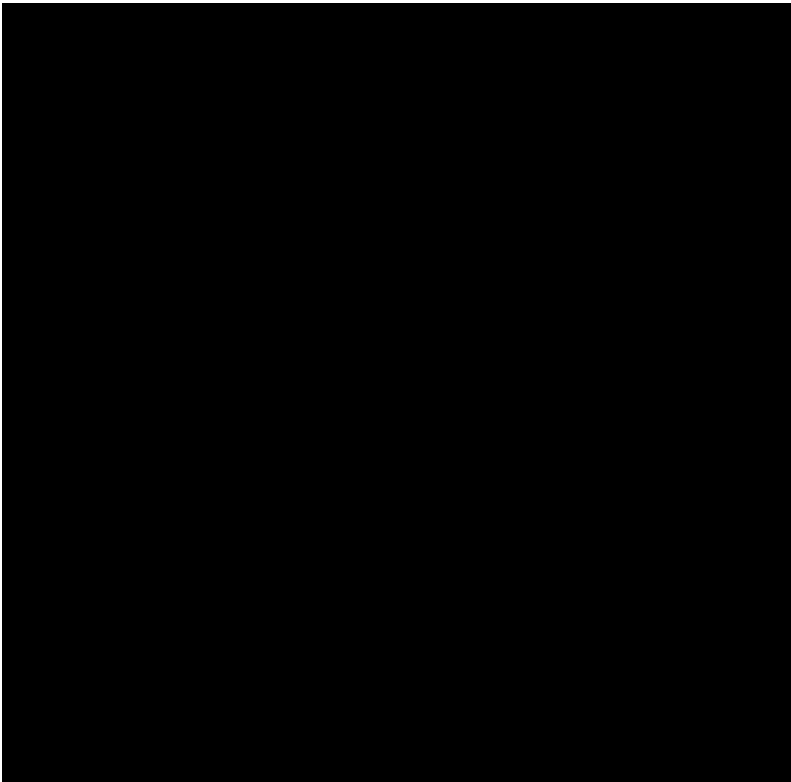
1 [INSERT Listed Items]

2

The sum in respect of the Listed Items is £[INSERT].

Part 3 – Parent Company Guarantee

The Parent Company Guarantee (Option X4) is attached here:

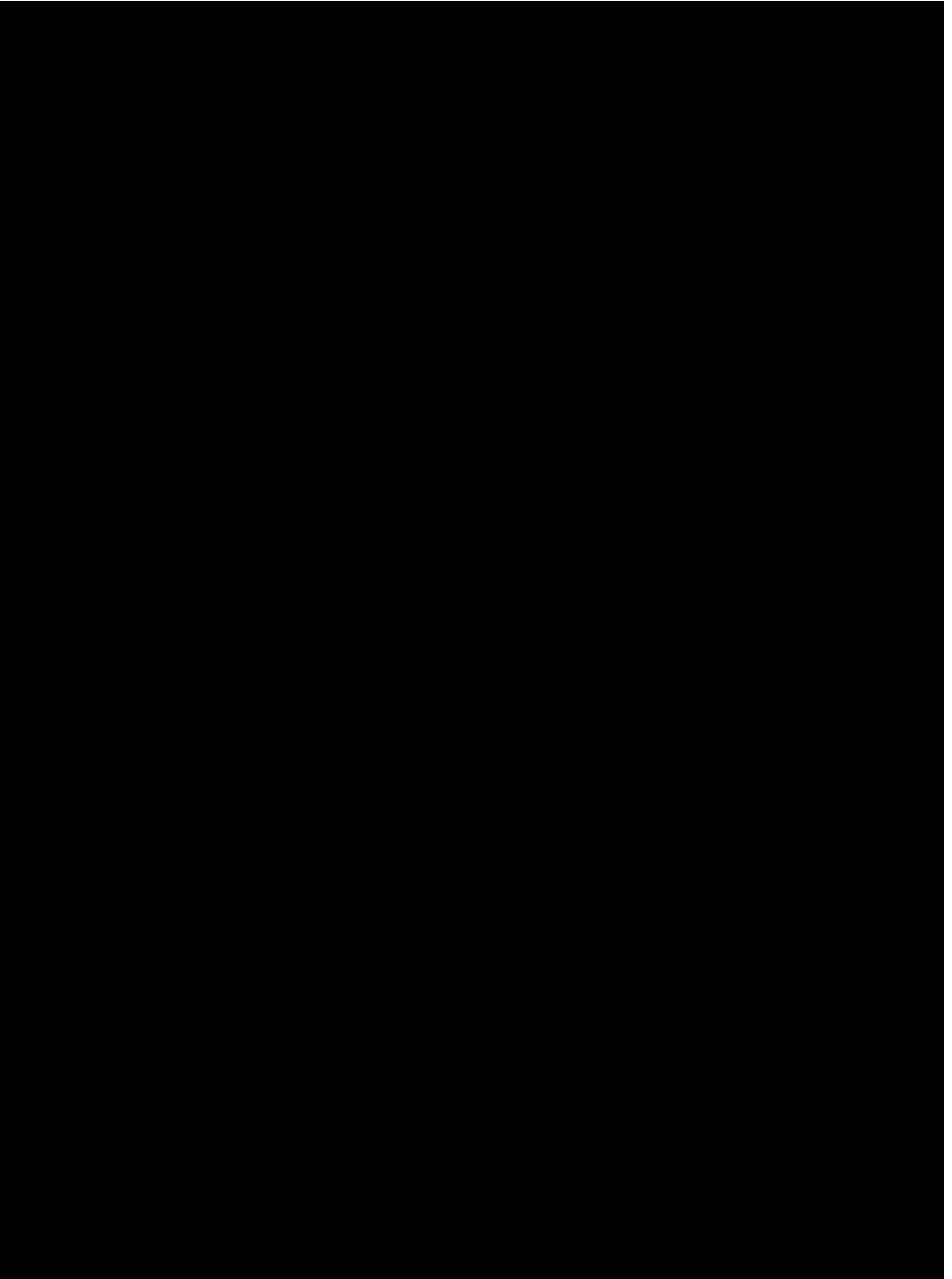


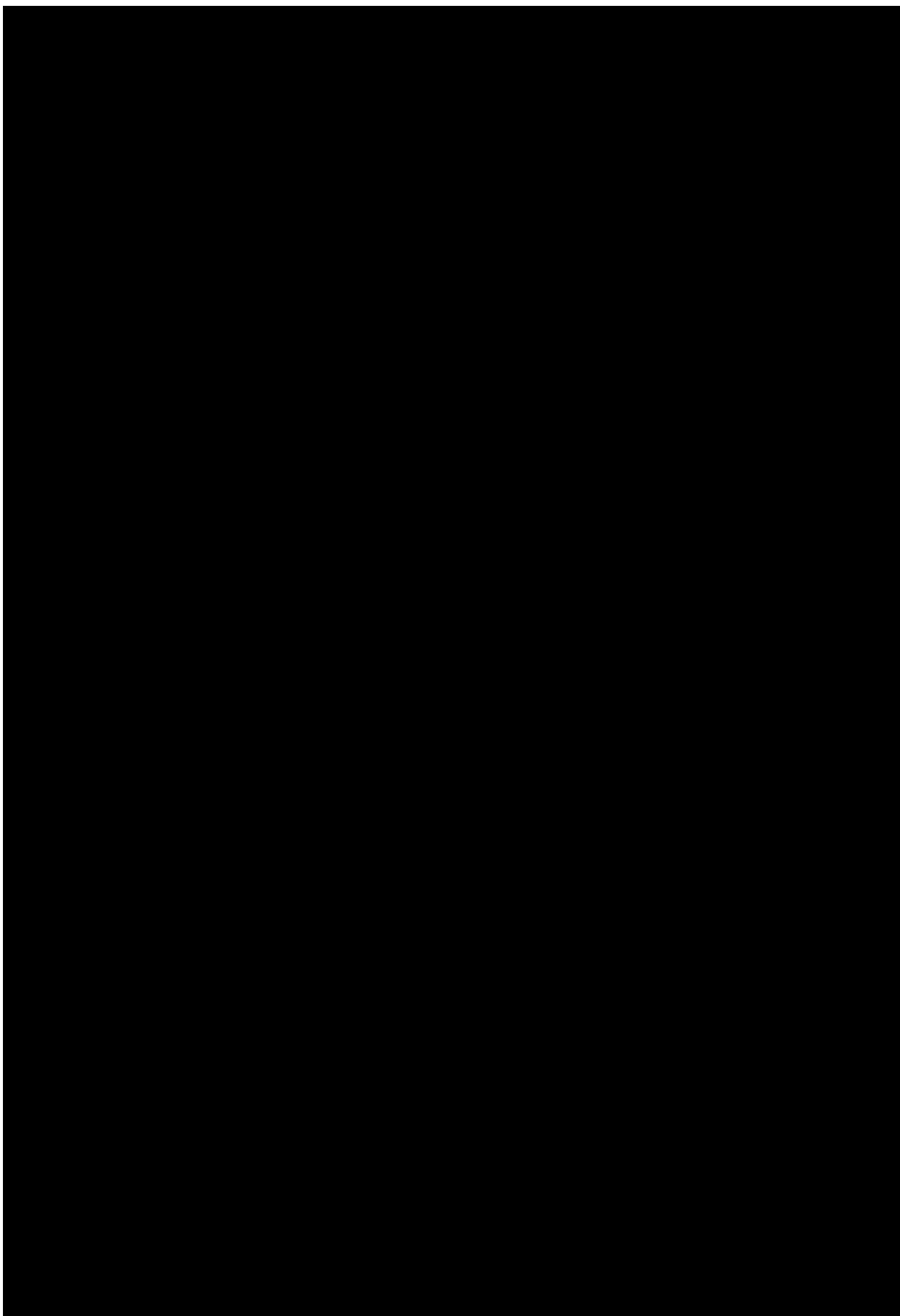
PARENT COMPANY GUARANTEE
relating to
[INSERT PROJECT DESCRIPTION]

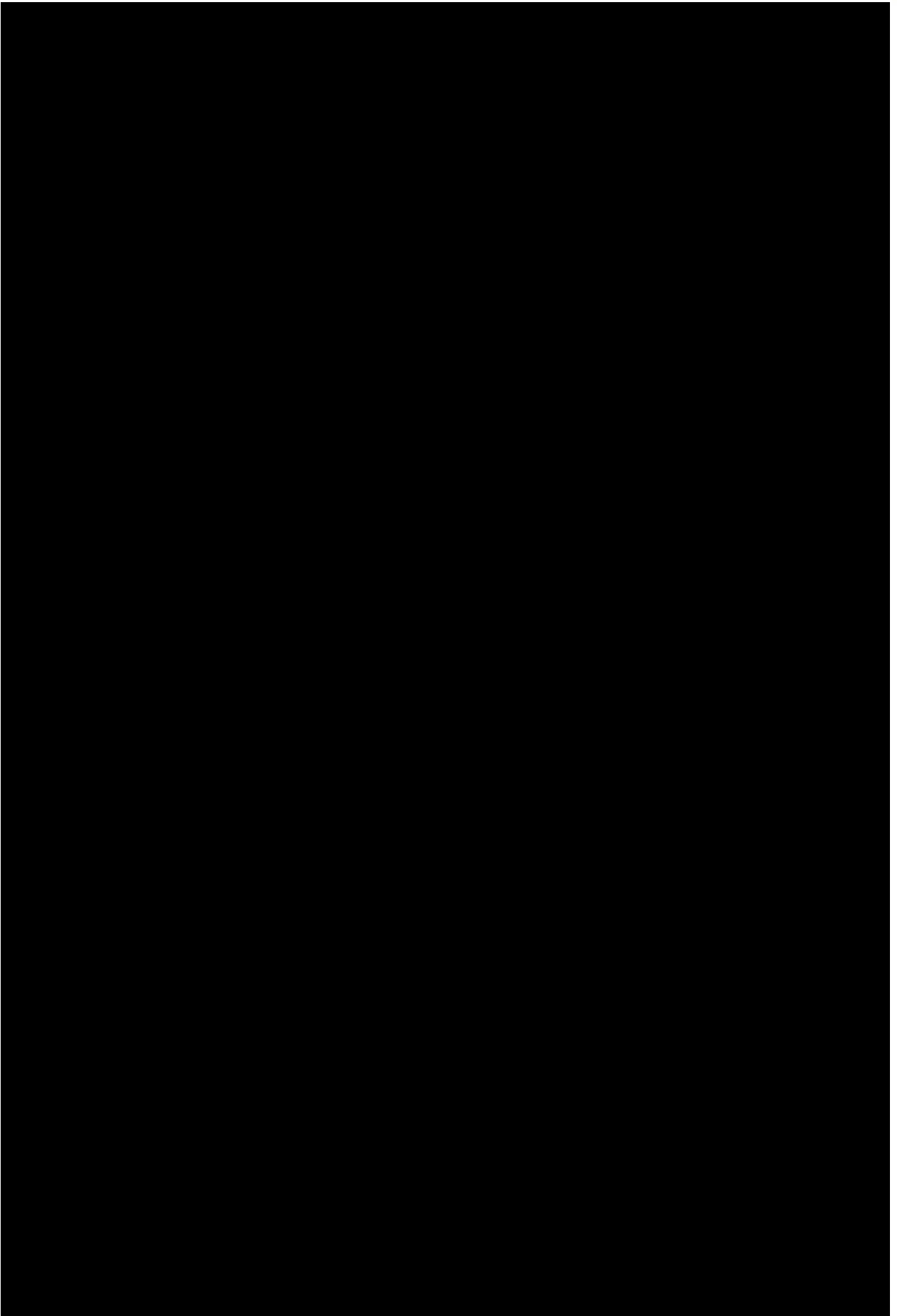
MILLS & REEVE

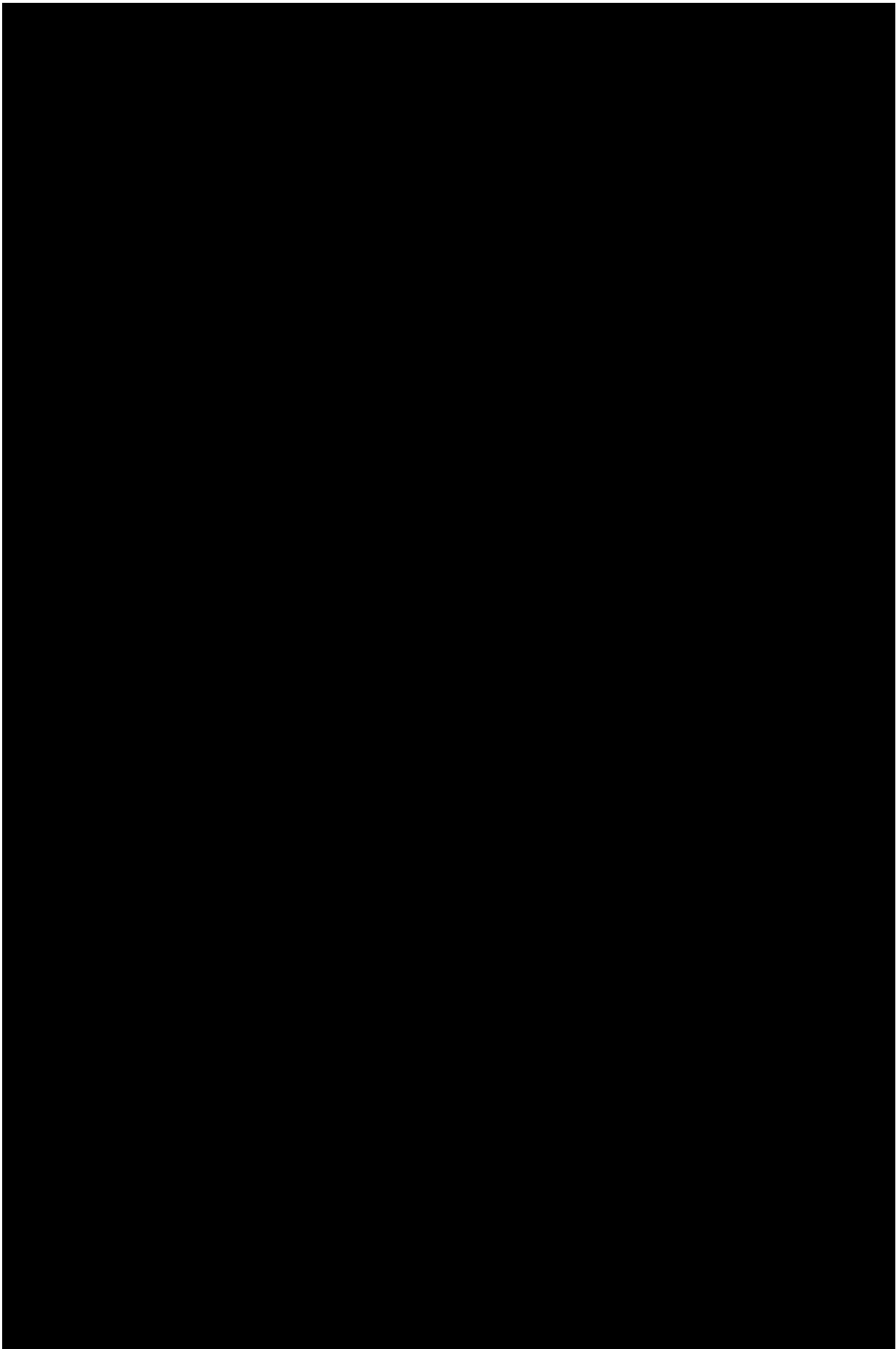
THIS **GUARANTEE** is made on

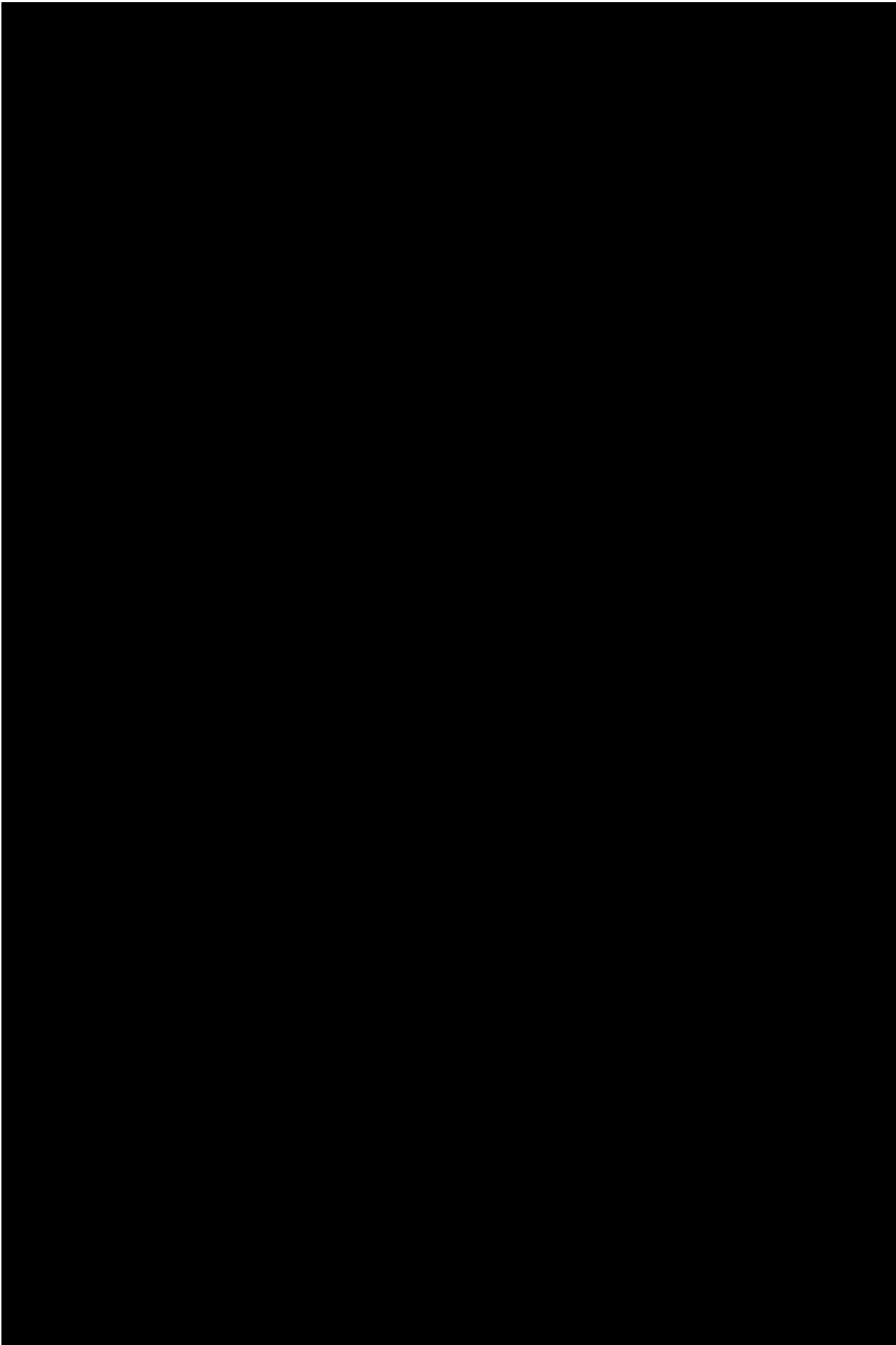
BETWEEN:

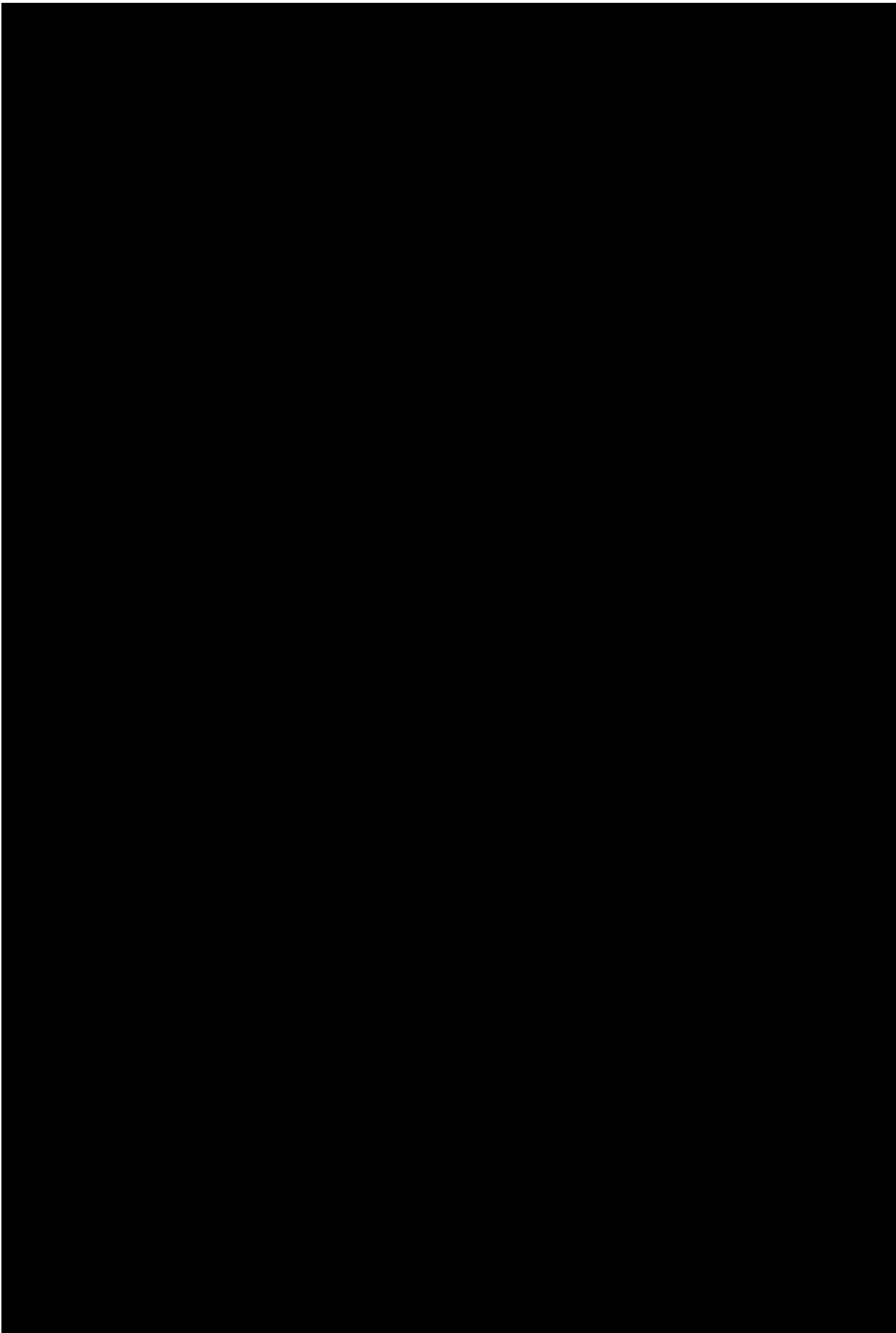


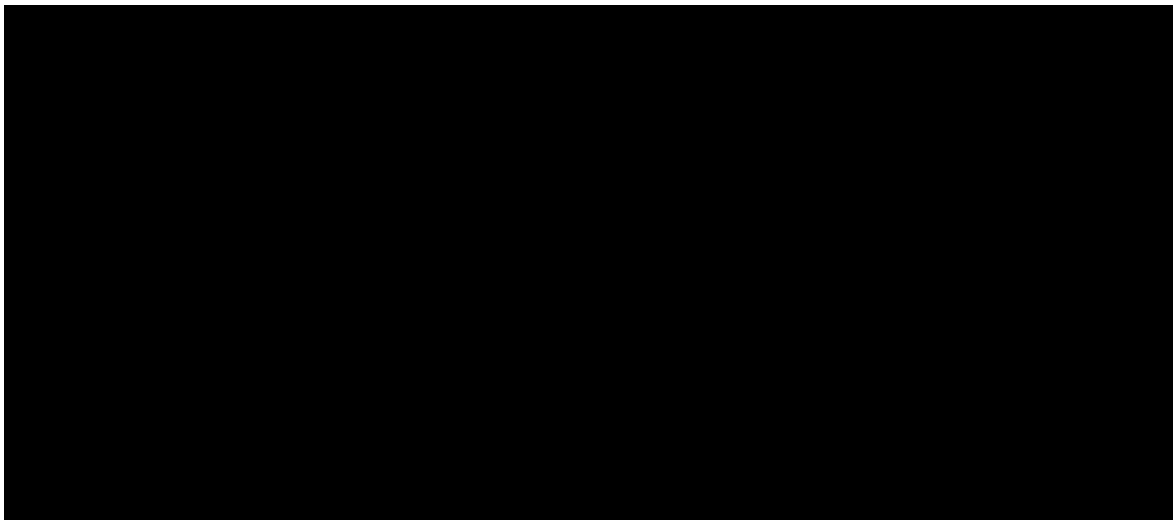












Part 4 - Off-Site Materials and Advanced Payment Bond

The Off-Site Materials and Advanced Payment Bond (Option X14) is attached here:

Part 4 - Off-Site Materials and Advanced Payment Bond

DATED _____

SURETY (1)

and

CLIENT (2)

BOND
relating to
[INSERT PROJECT DESCRIPTION]

MILLS & REEVE

BOND NUMBER:

This Bond is made on 20[]

Between

- (1) [SURETY] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [INSERT ADDRESS] (**Surety**)
- (2) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**, acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at Nobel House, 17 Smith Square, London SW1P 3JR ("**Client**").

Whereas

- (A) This bond (the **Bond**) is supplemental to a contract dated on or about the date hereof ("the **Contract**") made between the Client and [] ("the **Contractor**") in relation to the design, construction and completion of [] ("the **Development**").
- (B) Under or in connection to the Contract, the Contractor has ordered the manufacture and construction or purchase of the items listed in Annex B attached to this Bond ("the **Listed Items**") for inclusion in the *works* (as defined in the Contract) and the Contractor shall be responsible for storing, handling, transporting, securing and insuring the Listed Items whilst they are off-site.
- (C) The Surety has agreed to provide the Bond in the form as set out herein in relation to the performance of all the liabilities and obligations (in accordance with the terms of the Contract) of the Contractor under the Contract in regard to the Listed Items.

It is agreed:

1 Obligations

- 1.1 Subject to the relevant provisions of the Contract, the Client has agreed to include in payment assessments:
 - 1.1.1 the value of the Listed Items before their delivery to or adjacent to the Site (as defined in the Contract) and/or the *works*; and
 - 1.1.2 where applicable, the Contractor has agreed to insure the Listed Items against all loss or damage for their full value under a policy of insurance protecting the interests of the Client and the Contractor during the period commencing with the transfer of the property in the Listed Items to the Contractor or such other party as the Contractor may elect, until they are delivered to, or placed on or adjacent to the *works*; and
 - 1.1.3 this Bond shall exclusively relate to the amount paid to the Contractor in respect of the Listed Items which have not been delivered to, or placed on or adjacent to the *works*.

2 Demand

- 2.1 The sum that may be demanded under this bond is a sum not exceeding the Maximum Amount when the demand is received by the Surety.

3 Payment

3.1 The Client has agreed to pay the Contractor an amount equal to the value of the Listed Items ("the **Advance Payment**") on the following terms:

- 3.1.1 when the Surety receives a demand from the Client in accordance with clause 2.1 of this Bond the Surety shall repay the Client the sum demanded up to the Maximum Amount;
- 3.1.2 the Client shall in making any demand provide to the Surety a completed notice of demand set out at **Schedule 1** which shall be accepted as conclusive evidence for all purposes under this Bond;
- 3.1.3 the Surety shall within 14 Business Days after receiving the demand pay to the Client the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.

3.2 Payments due under this Bond shall be made notwithstanding any dispute between the Client and the Contractor and whether or not the Client and the Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.

4 Preservation of rights

4.1 The Surety consents and agrees that the following actions by the Client may be made and done without notice to or consent of the Surety and without in anyway affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:

- 4.1.1 waiver by the Client of any of the terms, provisions, conditions, obligations and agreements of the Contractor or any failure to make demand upon or take action against the Contractor;
- 4.1.2 any modification or changes to the Contract; and/or
- 4.1.3 the granting of any extensions of time to the Contractor without affecting the terms of clause 8.1.3 below.

5 Maximum Liability

5.1 The Surety's maximum aggregate liability under this Bond which shall commence on payment of the Advance Payment by the Client to the Contractor shall be the amount of £[]²⁶ which sum shall be reduced as follows:

- 5.1.1 by an amount equal to the value of the applicable Listed Items:
 - (i) delivered to or adjacent to the *works* and property in the Listed Items has passed to the Client as certified in writing to the Surety by the Project Manager (as defined in the Contract); and/or
 - (ii) that are subject to a valid and enforceable vesting agreement in the form set out at Part 2 of the Contract and entered into by the Client,

the Contractor and the relevant Key-Subcontractor (as defined in the Contract); and/or

- 5.1.2 by the amount of any reimbursement made by the Contractor to the Client as advised by the Client in writing to the Surety.

6 Assignment

- 6.1 The Client may at any time without the consent of the Surety assign, transfer or charge the benefit of this Bond and the Client's rights, interest and benefit under this Bond in parallel with an assignment of the benefit of the Contract.

7 Third Party Rights

- 7.1 Subject to clause 6.1 a person who is not a party to this Bond shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any terms of this Bond. This clause does not effect any right or remedy of any person which exists, or is available otherwise than pursuant to that Act.

8 Expiry

- 8.1 The obligations of the Surety under this Bond shall cease upon whichever is the earliest of:

8.1.1 the date on which the Maximum Amount is reduced to nil as certified in writing to the Surety by the Client;

8.1.2 the date on which the Advance Payment or any balance of it is repaid to the Client by the Contractor (as certified in writing to the Surety by the Client) or by the Surety; and

8.1.3 the date of Completion (as defined in the Contract) of the *works*,

and any claims under this Bond must be received by the Surety in writing on or before such earliest date.

9 Governing Law

- 9.1 This Bond shall be governed and construed in accordance with the laws of England and Wales.
-

IN WITNESS whereof this Deed has been duly executed and delivered on the date below:

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

witness' signature

witness' name

witness' address

Date: _____

The corporate seal of **THE
SECRETARY OF STATE FOR
ENVIRONMENT, FOOD AND RURAL
AFFAIRS** is hereunto affixed and is
authenticated by:

.....
Authorised Signatory

.....
Print Name

Schedule to Advance Payment Bond (Schedule 1)

(clause 2.1 of the Bond)

Notice of Demand

Date of Notice: _____

Date of Bond: _____

Client: _____

Surety: _____

The Bond has come into effect.

We hereby demand payment of the sum of

£_____ being the amount in respect of Listed Items included in an assessment which has been duly made to the Contractor by the Client, but such Listed Items have not been delivered to or adjacent to the *works* by the relevant date required by the Contract.

Address for payment: _____

This Notice is signed by the following persons who are authorised by the Client to act for and on his behalf:

Signed by _____

Name: _____

Official Position: _____

Signed by _____

Name: _____

Official Position: _____

Schedule of Listed Items (Annex B)

Part 5 – Retention Bond

The Retention Bond (Option X16) is attached here:

Part 5 - Retention Bond

DATED _____

SURETY (1)

and

CONTRACTOR (2)

and

CLIENT (3)

**BOND FOR RELEASE OF
RETENTION**

relating to

[INSERT PROJECT DESCRIPTION]

MILLS & REEVE

This Bond is made on

20[]

Between

- (1) [SURETY] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [INSERT ADDRESS] ("**Surety**");
- (2) **LAING O'ROURKE DELIVERY LIMITED** incorporated and registered in England and Wales with company number 04309402 whose registered office is at Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN ("**Contractor**"); and
- (3) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**, acting through the Department for Environment, Food and Rural Affairs (DEFRA) and its executive agencies whose address is at Nobel House, 17 Smith Square, London SW1P 3JR ("**Client**").

Whereas

- (A) This bond (the **Bond**) is supplemental to a contract dated on or about the date hereof ("the **Contract**") made between the Client and Laing O'Rourke Delivery Limited ("the **Contractor**") in relation to the design, construction and completion of the *works* (as defined in the Contract).
- (B) The Client has agreed that, subject to the provisions of the Contract, it will not make any deduction by way of retention from any amount otherwise due and payable to the Contractor under the Contract where the Contractor has provided a bond in accordance with the Contract in substitution for the sums that the Client would otherwise be entitled to deduct.
- (C) The Surety has agreed with the Client at the request of the Contractor to provide this Bond in for sums equal to the Retention, which the Client would be entitled to retain from the Contractor, from time to time, under and in accordance with the Contract and upon the terms and conditions of this Bond subject to the limitation set out in Clause 2.

It is agreed:

- 1 The Surety is hereby bound to the Client in the maximum aggregate sum of [] (figures and words) until the Surety is notified by the Client in writing of the date of issue of the next Interim Payment after completion as defined in the Contract when the maximum aggregate sum shall be reduced by [] per cent.
- 2 The Client shall, on a demand which complies with the requirements in clause 3 below, be entitled to receive from the Surety the sum therein demanded.
- 3 Any demand under this Bond must be served on the Surety at its office at [] in writing and shall be accompanied by a written statement by or on behalf of the Client signed by a director of the Client:
 - 3.1 stating that the Contractor is in breach of its obligations under the Contract and specifying the breach, and the sums due to the Client in respect thereof; and

- 3.2 specifying the amount of the Retention that would otherwise have been entitled to have deducted under the Contract by way of retention, as at the date of the demand, were it not for this Bond (the “**Retention Sum**”); and
- 3.3 stating the amount demanded, which shall not exceed the amount stated pursuant to Clause 3.2 above, and identify for which one or more of the following such amount is demanded:
 - 3.3.1 the costs actually incurred by the Client by reason of the failure of the Contractor to comply with the instructions of the Client under the Contract;
 - 3.3.2 the insurance premiums paid by the Client pursuant to the Contract because the Contractor has not taken out and/or not maintained any insurance of the building works which he was required under the Contract to take out and/or maintain;
 - 3.3.3 liquidated and ascertained damages which under the Contract the Contractor is due to pay or allow to the Client; and be accompanied by a copy of the notice of the Client which under the Contract he is required to issue and which states that the Contractor has failed to complete the works by the contractual Completion Date;
 - 3.3.4 any expenses or any direct loss and/or damage caused to the Client as a result of the termination of the Contractor’s employment by the Client;
 - 3.3.5 any costs, other than the amounts referred to in Clauses 3.3.1 to 3.3.4 above, which the Client has actually incurred and which, under the Contract, he is entitled to deduct from monies otherwise due or to become due to the Contractor; and identify his entitlement; and
- 3.4 incorporate a statement that the Contractor has been given 14 days’ written notice of his liability for the amount demanded hereunder by the Client and that the Contractor has not discharged that liability; and that a copy of this notice has at the same time been sent to the Surety at its office at [].

Such demand as above shall, for the purposes of this Bond but not further or otherwise, be conclusive evidence (and admissible as such) that the amount demanded is properly due and payable to the Client by the Contractor. The Surety shall within fourteen (14) Business Days of receipt of a demand, subject to the provisions of this Bond, pay the sum stated in the demand to the account detailed in the demand.

- 4 If the Contract is to be assigned or otherwise transferred with the benefit of this Bond, the Client shall be entitled to assign or transfer this Bond only with the prior written consent of the Surety, such consent not to be unreasonably delayed or withheld.
- 5 The Surety, in the absence of a prior written demand made, shall be released from its liability under this Bond upon the earliest occurrence of either:
 - 5.1 the date of issue under the Contract of the Defects Certificate as confirmed by the Client to the Surety; or
 - 5.2 satisfaction of a demand(s) up to the maximum aggregate under the Bond.

- 6 The Surety's obligation to make payment under this Bond shall be a primary, independent and absolute obligation and it shall not be entitled to delay or withhold payment for any reason.
 - 7 Any demand made hereunder must be received by the Surety accompanied by the documents as required by Clause 3 above on or before the earliest occurrence as stated above, when this Bond will terminate and become of no further effect whatsoever.
 - 8 Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
 - 9 This Bond shall be governed and construed in accordance with the laws of England and Wales.
-

THE SCHEDULE

Contract: A contract dated [] between the Employer and the Contractor for the construction of works comprising [description of the Works] for the original contract sum of £[] (STERLING)

Bond Amount: The sum of £[] (STERLING) [To equal [5% reducing to 2.5% on Completion of the Works or the last Section (As applicable)].

IN WITNESS whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: _____

as the Attorney and on behalf of the Surety: _____

In the presence of:

witness' signature

witness' name

witness' address

Date: _____

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **[LAING O'ROURKE
DELIVERY LIMITED]** acting by either two
directors or one director and the company
secretary:

.....

Director's name (CAPITAL LETTERS)

.....

Director's signature

.....

Director's/Company secretary's name
(CAPITAL LETTERS)

.....

Director's/Company secretary's signature

Part 6 - Notice to Proceed (Option X22)

The Notice to Proceed (as relevant to Stage One) (Option X22) is attached here:

Part 6 - Notice to Proceed²⁷

[TO BE TYPED ON THE CLIENT'S HEADED PAPER]

To:

LAING O'ROURKE DELIVERY LIMITED

Bridge Place Anchor Boulevard,
Admirals Park Crossways,
Dartford, Kent, DA2 6SN

[DATE]

[CLIENT'S REFERENCE]

Dear Sir/Madam,

[DESCRIPTION]

Notice to Proceed

We refer to the NEC4 ECC entered into between us on [DATE] (the "Contract").

In accordance with clause X22 of the Contract, we hereby give you Notice to Proceed with [DESCRIPTION] of the *works* (as defined in Contract) in accordance with the Contract.

Please arrange for the enclosed copy of this Notice to Proceed to be signed and returned to us to acknowledge receipt.

Yours faithfully

.....

The corporate seal of **THE
SECRETARY OF STATE FOR
ENVIRONMENT, FOOD AND RURAL
AFFAIRS** is hereunto affixed and is
authenticated by:

.....

Authorised Signatory

.....

Print Name

Part 7 - Trust Deed as part of the Project Bank Account (Option Y(UK)1)

The Trust Deed as part of the Project Bank Account (Option Y(UK)1) is attached here:

Deed of Trust²⁸

THIS DEED is made the

day of

2025

BETWEEN:

- (1) **The Client** (as detailed in Table 1 to this Deed);
- (2) **The Contractor** (as detailed in Table 1 to this Deed); and
- (3) **The Sub-Contractors** (as detailed in Table 1 to this Deed).

Collectively referred to in this Deed as "**the Parties**".

Background

- (A) The Client has engaged the Contractor to carry out the Project (as defined below).
- (B) To assist in the development and performance of the Project, the Contractor has engaged the Sub-Contractors to carry out certain parts of the work required in respect of the Project as set out in more detail in the Sub-Contracts (as defined below).
- (C) The Parties wish to adopt a payment mechanism which will (i) ensure the fair payment of both the Contractor and the Sub-Contractors; and (ii) that the Sub-Contractors receive payment at the same time as the Contractor. To achieve this objective, the Parties have agreed to operate a bank account in accordance with the terms of this Deed.

1 Definitions

1.1 In this Deed, the following words have the following meanings:

"Account Holder" means the Contractor;

"Bank" means the bank where the Bank Account will be held as set out in Table 1 to this Deed;

"Bank Account" means a bank account opened with the Bank which has no overdraft facility into which all monies due under the Contract will be paid by the Client in accordance with this Deed;

"Bank Mandate" means the instructions as to the operation of the Bank Account as agreed between the Account Holder and the Bank as set out in Schedule 9 to this Deed;

"Contract" means the contract between the Client and the Contractor in respect of the Project as detailed in Table 1 to this Deed;

"Project" means the project defined in Table 1 to this Deed;

"Sub-Contract or Sub-Contracts" means an agreement between a Sub-Contractor or Sub-Contractors and the Contractor in respect of the Project;

"Sub-Contractor" means the Sub-Contractor or Sub-Contractors referred to or to become a party to this Deed; and

"Term" means from the date of this Deed until such time as all monies due to the Contractor and the Sub-Contractors under the Contract and/or the Sub-Contracts have been paid in full.

2 Bank Account

- 2.1 The Account Holder undertakes to open a new interest bearing deposit bank account with the Bank, such account to be opened and held in the name of the Account Holder.
- 2.2 The Client undertakes to pay all monies due to the Contractor and/or the Sub-Contractors under the Contract (which amounts shall include all amounts due from the Contractor to the Sub-Contractors pursuant to the Sub-Contracts) into the Bank Account as and when such monies become due for payment in accordance with the terms of the Contract.
- 2.3 The Contractor pays into the Bank Account any amount not paid by the Client and/or any amount required to pay all monies due to the Sub-Contractors.
- 2.4 The Parties agree that any monies paid into the Bank Account shall, as from the date on which such monies are paid into the Bank Account, be kept separate and distinct and clearly identifiable, and shall be held on trust for each of the Contractor and the Sub-Contractors in the amounts owing to them as set out in the Account Holder's instructions to the Bank for the payment of monies to the Contractor and the Sub-Contractors. The Contractor and the Sub-Contractors acknowledge that they have no rights and/or interest in the monies held in the Bank Account other than (i) in the case of the Contractor, in its capacity as Account Holder and as a beneficiary of the monies owing to it pursuant to the Contract and (ii) in the case of a Sub-Contractor, as a beneficiary of the monies owing to it pursuant to the relevant Sub-Contract.
- 2.5 If for any reason the total amount of monies deposited by the Client in the Bank Account is less than the total amount of monies which has been authorised by the Account Holder for payment to the Sub-contractors and the Contractor in accordance with clause 3.2.2, the monies held in the Bank Account shall be allocated to each of the Sub-Contractors and the Contractor as follows:
 - 2.5.1 Where and to the extent that the shortfall of monies in the Bank Account is, or is likely to be due to amounts withheld from payment following the issue of a 'Pay Less Notice' by the Client, the Client shall have properly identified within the Pay Less Notice, the specified amounts to be deducted in relation to each Sub-contractor and/or the Contractor as required, and shall have provided full and proper documentary evidence to support such deductions, as the case may be.
- 2.6 The Client acknowledges that, as and when monies are paid by it into the Bank Account in accordance with the Contract, it will cease to have any further rights and/or interest in such monies.
- 2.7 The Account Holder accepts that, irrespective of any disputes, which may arise in respect of work performed by the Contractor and/or the Sub-Contractors, the Account Holder may not withdraw any monies from the Bank Account (other than in the case of the Contractor where it may withdraw monies owned by it).

- 2.8 The Parties agree that, when a payment is due to be made pursuant to the Contract or a Sub-Contract and provided that the balance of the Bank Account is sufficient to make such payment, the Account Holder shall promptly provide the instructions to the Bank referred to in clause 2.4 to make such payment to the Contractor or relevant Sub-Contractor as the case may be. The Account Holder accepts no liability for any loss incurred by the Client and/or the Sub-Contractors as a result of a failure to provide such instructions except where such failure is due to the fraud, gross negligence or wilful default of the Account Holder.

3 Operation of the Bank Account

3.1 The Account Holder agrees:

- 3.1.1 to sign the Bank Mandate as soon as reasonably practicable following execution of this Deed and, in any event, within 21 days of the date of this Deed;
- 3.1.2 to operate the Bank Account at all times in accordance with the Bank Mandate, this Deed and the Contract. If there is any conflict between the Bank Mandate, this Deed and/or the Contract, the documents shall take precedence in the following order:
- (i) this Deed;
 - (ii) the Bank Mandate; and
 - (iii) the Contract.
- 3.1.3 the Bank Account shall not become overdrawn;
- 3.1.4 to keep accurate, complete and up to date books of account and records of all transactions relating to the Bank Account, including but not limited to details of all payments out of the Bank Account authorised by the Account Holders and any bank charges payable;
- 3.1.5 if the Account Holder has the ability to authorise transactions in respect of the Bank Account via an electronic facility operated by the Bank, the Account Holder shall ensure that its access details for such facility are only made available to those of its employees and/or representatives which need to know such information and that such employees and/or representatives are aware of the confidential nature of the access details, the Bank Account details and the Bank Account transactions;
- 3.1.6 to be responsible for the acts and/or omissions of their own employees and/or other representatives as if they were its own acts and/or omissions;
- 3.1.7 to be liable for their own acts and/or omissions under this Deed;
- 3.1.8 to hold all monies in the Bank Account on trust for the full and exclusive benefit of the Contractor and the Sub-Contractors in accordance with clauses 2.4 and 2.5 above.

- 3.2 When a payment certificate is issued on the basis set out in and as provided for in the Contract, the Account Holder shall identify any payments due under the Contract and the Sub-Contracts and:

- 3.2.1 the Client shall promptly pay the monies due under the Contract into the Bank Account;
- 3.2.2 as and when the monies referred to in clause 3.2.1 have cleared, the Account Holder shall promptly authorise the Bank to make any payments due pursuant to the Contract and/or Sub-Contract to the Sub-Contractors and/or the Contractor from the Bank Account.
- 3.3 The Contractor agrees to promptly inform each of the Sub-Contractors of the amounts which are to be paid to them from the Bank Account and the date on which the Sub-Contractor can expect to receive such payment, being the same day as the Account Holder authorises the payments out of the Bank Account.
- 3.4 All payments to the Sub-Contractors and the Contractor shall be made by bank transfer Banker's Automated Clearing System (BACS). The Sub-Contractors and the Contractor must inform the Account Holder of their relevant bank account details and keep them up to date at all times. The Sub-Contractors and the Contractor accept that failure to do so may result in monies not being paid to them and that the Account Holder has no liability for such failure (except where such failure is due to the fraud, gross negligence or wilful default of the Account Holder).
- 3.5 Any interest paid by the Bank in respect of the monies held in the Bank Account shall belong to the Contractor and shall be paid to the Contractor by the Account Holder on conclusion of the works under the Contract.
- 3.6 Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Bank Account shall be borne by the Contractor.

4 New Sub-Contractors

- 4.1 If the Contractor appoints a new Sub-Contractor in respect of the Contract after the date of this Deed and agrees with that new Sub-Contractor that it shall be paid via the Bank Account, the Account Holder shall arrange for the new Sub-Contractor to sign a Deed of Adherence in the form set out in Annex A to this Deed.
- 4.2 The Parties agree that, in signing the Deed of Adherence, the Account Holder is signing on behalf of themselves and as agent for each of the Sub-Contractors. Each Sub-Contractor agrees to be bound by the terms of any Deed of Adherence validly executed by the Account Holders on behalf of all the Parties.

5 Removal of Sub-Contractor

- 5.1 If prior to the expiry of the Term a Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Account Holder shall arrange for the payment out of the Bank Account to the Sub-Contractor of any monies held on trust for the benefit of that Sub-Contractor.
- 5.2 On payment of all the monies due to it from the Bank Account in accordance with clause 5.1 above the Sub-Contractor shall cease to have any further rights and/or interests in the Bank Account.

6 Confidentiality

- 6.1 No party shall use and/or disclose any confidential information, which is acquired by it about another party's business and/or given to it by another party to this Deed except in the proper performance of this Deed.

7 Termination

- 7.1 This Deed shall continue for the Term, subject to early termination in accordance with clause 7.2 below.
- 7.2 This Deed shall immediately terminate if:
- 7.2.1 the parties agree in writing that the Deed should terminate; and/or
 - 7.2.2 the Contract terminates and all monies have paid out from the Bank Account.
- 7.3 On termination of this Deed the Account Holder shall undertake to ensure all monies held on trust for the benefit of the Contractor and/or the Sub-Contractors and held in the Bank Account are promptly paid to the relevant parties (less any outstanding bank charges and expenses).

8 General

- 8.1 This Deed contains the whole agreement between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Deed shall exclude liability for any fraudulent statement or act made prior to the date of this Deed.
- 8.2 No waiver by any Party of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 8.3 The invalidity, illegality or unenforceability of any of the provisions of this Deed shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.
- 8.4 For avoidance of doubt, this Deed shall not create any direct contractual relationship between the Client and any Sub-Contractor under any Sub-Contract.
- 8.5 No Party shall be liable for any delay or failure in performing its obligations under this Deed as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, sub-contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Bank Account is not a force majeure event.
- 8.6 The Sub-Contractors are only liable for their own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other Sub-Contractors. The Sub-Contractors are not jointly and severally liable under this Deed.
- 8.7 No party may assign its interest in this Deed (or any part) without the written consent of the other parties, such consent not to be unreasonably withheld or delayed.

8.8 None of the terms and conditions of this Deed shall be enforceable by any person who is not a party to it.

8.9 This Deed is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **[LAING O'ROURKE DELIVERY LIMITED]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **[SUB-CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Annex A

Deed of Adherence

THIS DEED OF ADHERENCE is dated the day of 2025

BETWEEN:

- (1) **THE CURRENT PARTIES** (as defined below); and
- (2) **[INSERT NAME OF NEW SUB-CONTRACTOR]** (Company number: []) whose registered office is at [] ("New Party").

Background

- (A) The Current Parties have entered into a deed dated [] which governs the operation of a project bank account into which all monies due under the Contract (as defined below) are paid.
- (B) The New Party is a sub-contractor of Laing O'Rourke Delivery Limited. It has been agreed by [the Client and] the Contractor that the New Party will be paid for its work using the Project Bank Account (as defined below).
- (C) This Deed of Adherence constitutes the terms upon which the New Party agrees to be paid for the work it performs for the Contractor via the Project Bank Account and sets out the New Party's rights and interests in the monies contained within the Project Bank Account.

2 Definitions

- 2.1 In this Deed the following words have the following meanings:

"**Admission Date**" means [insert date];

"**Client**" means the Secretary of State for Environment, Food and Rural Affairs;

"**Contract**" means the contract between the Client and the Contractor dated [] for [insert details of the project];

"**Contractor**" means Laing O'Rourke Delivery Limited;

"**Current Parties**" means the persons/organisations whose names are set out in Appendix 1 to this Deed of Adherence being the current parties to the Deed;

"**Deed**" means the Deed between the Current Parties dated [] which sets out the basis on which the Project Bank Account is to be operated; and

"**Project Bank Account**" means the bank account held in the name of the Contractor at [INSERT NAME OF BANK] account number [INSERT BANK ACCOUNT NUMBER] into which all monies due in respect of the Contract are to be paid.

3 Admission

- 3.1 The New Party will be added as a party to the Deed on the Admission Date.

- 3.2 The New Party agrees to be bound by the Deed in relation to the Current Parties as from the Admission Date as if the New Party was an original party to the Deed.
- 3.3 The Current Parties agree to be bound by the Deed in relation to the New Party as from the Admission Date as if the New Party was an original party to the Deed.

4 General

- 4.1 The Client and the Contractor are authorised by the remaining Current Parties to enter into and execute this Deed on behalf of all the Current Parties as their agent.
- 4.2 This Deed of Adherence is governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.

Appendix 1 to Annex A

The Current Parties

[Insert details of the current parties to the Deed].

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **[LAING O'ROURKE DELIVERY LIMITED]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

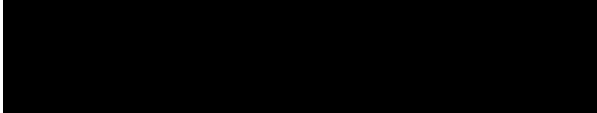
Executed as a deed by **[INSERT NAME OF NEW PARTY]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature

.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Table 1

Details

Client:	THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS acting through the Department for Environment Food and Rural Affairs, (DEFRA) and its executive agencies.
Contractor:	LAING O'ROURKE DELIVERY LIMITED (company number 04309402) whose registered address is Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN.
Sub-Contractors:	[insert names, addresses and company numbers for each sub-contractor who will be a party to this Deed].
Bank:	[insert details of the bank which will operate the project bank account].
Contract:	Contract between (1) the Client and (2) the Contractor in respect of the Project and dated [insert date] (contract reference number: []).
Project:	

Annex B

Bank Mandate

[Insert the instructions as to operation of the bank account as agreed between the account holder and the bank].

The corporate seal of **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** is hereunto affixed and is authenticated by:

.....
Authorised Signatory

.....
Print Name

Executed as a deed by **[LAING O'ROURKE DELIVERY LIMITED]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Executed as a deed by **[INSERT NAME OF SUB-CONTRACTOR]** acting by either two directors or one director and the company secretary:

.....	
Director's name (CAPITAL LETTERS)	Director's signature
.....	
Director's/Company secretary's name (CAPITAL LETTERS)	Director's/Company secretary's signature

Schedule 9

Part 1 - Other Documents Forming Part of the Contract

This Part 1 of Schedule 9 contains:

- The *key persons* experience.
- Social Value Plan
- Tendered Resource Schedule
- B950 and B951 Efficiency Schedule
- The *boundaries of the site* drawings

Schedule 10

Security Aspects Letter

