EVERSHEDS SUTHERLAND

Cadent
Your Gas Network

Dated: 2019

(1) Cadent Gas Limited

(2) [ ]

Direct Service Provider Contract

relating to Mains Replacement Works in the North West of England

Contract Number: [ ]

DRAFT: 3.0
Ref: 336594.000007
Date: 27 March 2019
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THIS AGREEMENT is made the day of 2019

BETWEEN

(1) CADENT GAS LIMITED a company registered in England under Company Number 10080864 whose registered office is situated at Ashbrook Court Prologis Park Central Boulevard Coventry CV7 8PE (the "**Employer**").

(2) [CONTRACTOR] a company registered in England under Company Number [ ] whose registered office is [ ] (the "**Contractor**")

together being the "**Parties**" each being a "**Party**".

BACKGROUND

(A) The Employer is undertaking a programme of 150km of mains replacement and associated work comprising Tier 1 (<=8" dia) and associated T2/T3 pipework replacement as required in compliance with policy in order to achieve mains replacement targets set by the Health and Safety Executive and the Regulator for the Employer ("**Overall Project**").

(B) The Employer wishes to procure work packages relating to the Overall Project and the Contractor has agreed to carry out a work package in accordance with the terms and conditions referred to in this Agreement.

IT IS HEREBY AGREED THAT in consideration of the payment of one pound (£1.00) by the Employer to the Contractor receipt of which the Contractor acknowledges**:**

1. **DEFINITIONS**

In this Agreement words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract referred to below.

2. **AGREEMENT**

2.1 The following documents shall be deemed to form and be read and construed as part of this Agreement, namely:

2.1.1 the "**Conditions of Contract**" being the NEC Engineering and Construction Short Contract Third Edition April 2013 subject to the amendments set out in Schedule 2 of this Agreement;

2.1.2 the Contract Data attached at Schedule 1 of this Agreement; and

2.1.3 the other Schedules to this Agreement.

2.2 In consideration of the payments to be made by the *Employer* to the *Contractor* referred to in this Agreement, the *Contractor* hereby covenants with the *Employer* to carry out the *works* in conformity in all respects with the provisions of the Agreement.

2.3 The *Employer* covenants to pay to the *Contractor* in consideration of the provision of the *works* the amounts payable in accordance with the Conditions of Contract at the times and in the manner prescribed by the Conditions of Contract.

3. **COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which when executed shall together constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

THIS DOCUMENT is to be signed for and behalf by the signatories below whom have been duly authorised by the Employer and Contractor respectively:

Signature of authorised representative of Cadent Gas Limited

Name _____
(signature)

_____
(print name)

Witness _____
(signature)

_____
(print name)

Signature of authorised representative of [CONTRACTOR]:

Name _____
(signature)

_____
(print name)

Witness _____
(signature)

_____
(print name)

SCHEDULE 1

Contract Data

Contract Data

	The *Employer* is
Name	Cadent Gas Limited (10080864)
Contact name	[ ]
Address	Ashbrook Court Prologis Park, Central Boulevard, Coventry, United Kingdom, CV7 8PE
Telephone	[ ]
E-mail address	[ ]
	The Construction Manager is
Name	Arcadis (UK) Limited (01093549)
Contact name	[ ]
Address	Cadent Gas, Holditch Road, Chesterton, Newcastle-under-Lyme ST5 9JQ
Telephone	[ ]
E-mail address	[ ]
	The Principal Contractor is
Name	T&K Gallagher Limited (04057938) ("TKG") such that TKG will be the named duty holder on form F10 submitted to the Health and Safety Executive.
Contact name	[Colin Smith]
Address	Cadent Gas, Holditch Road, Chesterton, Newcastle-under-Lyme ST5 9JQ
Telephone	[ ]
E-mail address	[ ]
The *works* are	Described in the Works Information attached at Schedule 4 of this Agreement.
The *site* is	The parts of the Employer's gas distribution network in the North West of England identified as more particularly described on a site by site basis in the Works Information
The *starting date* is	[ ] June 2019
The *completion date* is	[ ]
The *period for reply* is	2 weeks.

The *defects date* is	calculated as follows:
	• in respect of any *works* carried out that are subject to the requirements of NRSWA and associated reinstatement guarantee periods in accordance with the Specification for the Reinstatement of Openings in Highways (issued by the Highway Authorities and Utilities Committee), the *defects date* shall be the date of expiry of the relevant reinstatement guarantee period for such *works* such date being either:
	  ○ 2 years after date of completion of permanent reinstatement of those *works* where depth of cover of pipe is less than 1.5m or
	  ○ 3 years after date of completion of permanent reinstatement of those *works* where depth of cover of pipe is greater than 1.5m (trenches with a depth of cover that is intermittently more than 1.5m for lengths of less than 5m are not deemed to be deep openings)
	or

Contract Data

in respect of any *works* other than those referred to in the first main bullet above, the *defects date* is 52 weeks after Completion of those *works*.

The *period for reply* is [ ] weeks.

The *defect correction period* is
[ ] hours for emergency defects
[ ] hours for urgent defects
[2] weeks for other defects

The *assessment day* is The last working day of each week as more particularly described in Schedule 3 (Self-Billing))

The *retention* is 5 %.

Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply? Yes / ~~No~~ (delete as appropriate)

The Parties agree that the duration of the work is estimated to be less than 45 days Yes / No (delete as appropriate)

The interest rate on late payment is 1% per annum above the base rate of Barclays Bank Plc

The *Employer* provides this insurance

Insurance against	Minimum account of cover or minimum limit of indemnity	Deductibles	Cover provided until	Further requirements
All permanent and/or temporary works, materials, equipment and supplies (including all free issue materials) and any other property for which the insured is responsible, intended for use or incorporation in the works, excluding contractors plant and equipment	Full reinstatement based on estimated contract value. Sub-limits: To be agreed.	£25k £2m per item (Sub limit)	The certificate of Completion has been issued	The policy shall name the *Employer*, the *Contractor* and the *Contractor's* consultants and sub-contractors of any tier as co-insured. To include Terrorism. Insurers to have minimum security rating of A- as assessed by Standard and Poors (or an equivalent rating by AM Best)
Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the Contract.	Replacement cost	£10k (£50k natural risk)	The certificate of Completion has been issued	No further requirements.

The minimum amount of cover for the third insurance stated in the Insurance Table is £10,000,000 (ten million pounds)

The minimum amount of cover for the fourth insurance stated in the Insurance Table is £10,000,000 (ten million pounds)

The *Adjudicator nominating body* is The President or Vice President for the time being of the Technology and construction Solicitors Association

The *tribunal* is the Technology and Construction Court and the Employer and the Contractor submit to the exclusive jurisdiction of the Courts of England and Wales

If the *tribunal* is arbitration, the n/a

Contract Data

arbitration procedure is	

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 as amended by the schedule of amendments attached at Schedule 2.

The *Contractor's* Offer

	The *Contractor* is
Name	[ ]
Contact name	[ ]
Address	[ ]
Telephone	[ ]
E-mail address	[ ]
The percentage for overheads and profit added to the Defined Cost for people is	[ ] %
The percentage for overheads and profit added to other Defined Cost is	[ ] %

The *Contractor* will Provide the Works in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract.*

The total of the Prices is	£[ ]

Price List

The Price List is in Schedule 5 attached to this Agreement.

Works Information

The Works Information is in Schedule 4 attached to this Agreement.

SCHEDULE 2

Schedule of Amendments

SCHEDULE OF AMENDMENTS

This schedule of amendments amends the NEC Engineering and Construction Short Contract Third Edition April 2013 ("**NEC3**").

In the event of any ambiguity between the provisions of this schedule of amendments and the other provisions of the unamended NEC3, the provisions of this Annex 1 shall prevail and take precedence.

1. **General**

Insert new definitions as follows:

"11.2(A1) Applicable Law means any applicable statute, Act, order or other law, regulation or bye-law or any rule, code or direction having the force of law or any regulatory licence, consent, permit, authorisation or other approval including any conditions attached thereto of the United Kingdom or any part thereof or of the European Union or of any public body or authority which has appropriate jurisdiction."

Insert new definitions as follows:

11.2(A1) CDM Regulations are the Construction (Design and Management) Regulations 2015 together with any requirements issued from time to time by the Health and Safety Executive."

Delete the definition of Completion and replace as follows:

"(1) Completion is when the *Contractor* has:

- done all the work which the Works Information states it is to do in respect of the relevant *works* (including supplied all the documents and information which the Works Information states it is to supply in respect of those *works*);
- correct all Defects which have been notified prior to Completion, except for those Defects which the *Employer* has agreed may be corrected after Completion; and
- any other pre-conditions to Completion stated in the Works Information have been satisfied.

If the work which the *Contractor* is to do in order to achieve Completion is not stated in the Works Information, Completion is when the *Contractor* has done all the work and provided all the documents and information necessary for the *Employer* to use the *works* and for Others to do their work and has corrected notified Defects."

Insert a new definition as follows:

"11.2(2A) Construction Manager is Arcadis (UK) Limited (including TKG in its capacity as subconsultant to Arcadis (UK) Limited, but not for the avoidance of doubt in its capacity as Support Services Contractor) or such other person appointed by the *Employer* as notified by the *Employer* to the *Contractor* from time to time in accordance with clause 14 acting through the individuals notified by the *Employer* to the *Contractor* prior to the date of this contract or as updated by the *Employer* from time to time."

11.2(4) In the definition of Defect, after "Works Information" insert "or the *Contractor's* obligations under this contract".

Delete the definition of Defined Cost and replace as follows:

"11.2(5) Defined Cost means

- amounts for labour (whether subcontracted or not), Plant and Materials and Equipment provided by the *Contractor* valued, so far as possible, by reference to the Price List; and
- to the extent that the *Employer* decides, whether following a notification from the *Contractor* under clause 52.1 or otherwise, that the Price List does not contain a rate or price for any labour (whether subcontracted or not), Plant and Materials or Equipment provided by the Contractor:
  - amounts agreed by the Parties as being reasonable amounts representing payments made by the *Contractor* for such labour, Plant and Materials or Equipment, or if agreement cannot be reached;
  - amounts representing payments made by the *Contractor* for such labour, Plant and Materials or Equipment valued using the Contractor's records referred to in clause 52,

and in each case less Disallowed Cost."

Insert new definitions as follows:

"11.2(5A) Disallowed Cost means cost which the *Employer* decides:

- is not justified by the *Contractor's* accounts and records;
- should not have been paid to a subcontractor or supplier in accordance with its contract;
- was incurred only because the *Contractor* did not:
  - follow an acceptance or procurement procedure stated in this contract; or
  - give an early warning which this contract required him to give;

and the cost of:

- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage), unless resulting from a change to the Works Information or an instruction to omit work under clause 33;
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away when the *Employer* requested;
- events for which this contract requires the *Contractor* to insure; and
- preparation for and conduct of an adjudication or proceedings of the *tribunal*;

and:

- any amounts relating to overhead and profit (which are provided for in accordance with the percentages stated in the Contract Data);
- any costs incurred in connection with the remedying of Defects at any time; and
- amounts paid to the *Contractor* by insurers."

11.2(6) In the definition of Equipment delete "not included in the *works*" and insert: "which the Works Information does not require it to include in the *works*".

Insert new definitions as follows:

"11.2(6A) EIR means the Environmental Information Regulations 2004, subordinate legislation made under them, any amendment or re-enactment of any of them and any guidance and/or codes of practice issued in relation to such legislation from time to time.

11.2(6B) Employer's Step-in Rights is defined in clause 100.

11.2(6C) Environment means any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (including drains and sewers), land (including under any water as described above and whether above or below the surface) and for the avoidance of doubt includes the same both onshore and offshore.

11.2(6D) Environmental Law means any rule of common law, statute, code of practice, circular, guidance note, by-law or regulation having the force of law or any consent, license, permit, order notice, recording, registration or judgement whose breach can give rise, whether immediately or not, to criminal, civil or administrative damages, sanctions or penalties for the failure to meet obligations relating to the presence, release, spillage, treatment, handling, deposit, escape or other mode of existence of any substance, the carrying out of any activity, or the existence of any condition or any phenomenon which has or could have a detrimental impact on the Environment and which in any such case has as its primary purpose or effect the protection of the Environment generally or in any particular locality.

11.2(6E) Free Issue Items are items of Plant and Materials provided by or on behalf of the *Employer* in accordance with the procedures set out in the Works Information that are identified by the *Employer* as constituting Free Issue Items.

11.2(6F) Good Industry Practice means the standards, practices, methods and procedures conforming to all Statutory Requirements and the degree of skill, care, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced person undertaking all or part of the *works*, as the case may be, under the same or similar circumstances.

11.2(6G) Information means information recorded in any form held by the *Contractor* (or other entity on behalf of the *Contractor*) subject to the EIR which relates to the *Employer* and/or this contract.

11.2(6H) Insolvent means the relevant Party

- suspends, or threatens to suspend, payment of its debts; or is unable to pay its debts as they fall due; or admits inability to pay its debts; or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- has a receiver or provisional liquidator appointed over any of its assets, undertaking or income;
- is subject to a notice of intention to appoint an administrator or has an administrator appointed in respect of it;
- passes a resolution for its winding-up; or
- has a winding up order made by a court in respect of it.

11.2(6I) Notified Sum is defined in clause 51.3.

11.2(6J) NRSWA means the New Roads and Street Works Act 1991 and any statutory modification (including under the Traffic Management Act 2004) or re-enactment thereof for the time being in force.

11.2(6K) Others are people or organisations who are not the *Employer*, the *Adjudicator*, the *Contractor,* the Construction Manager or any employee, subcontractor or supplier of the *Contractor*."

Insert a new definition as follows:

"11.2(7A) Pay Less Notice is defined in 51.6."

Insert a new definition as follows:

"11.2(8A) A Prevention Event is, subject to clause 60.2, an event which

- stops the *Contactor* completing the *works* or
- stops the *Contractor* completing the *works* by the date shown on the programme

and which

- neither party could prevent and
- an experienced contractor would have judged at the date of this contract to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- which arises from
  - war, insurrection, civil commotion, act or threat of terrorism, blockade or embargo,
  - epidemic or plague
  - strikes, lock-outs and industrial disputes (other than those primarily involving the employees of the *Contractor* or any of its subcontractors),
  - the exercise after the *starting date* by the United Kingdom Government of any statutory power which directly affects the execution of the *works* by restricting the availability or use of labour which is essential to the proper carrying out of the works or preventing the *Contractor* from or delaying the *Contractor* in securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the *works*."

Insert a new definition as follows:

"11.2(9A) Price List is the price list stated in the Contract Data."

Insert a new definition as follows:

"11.2(10A) Programme means the latest programme for the *works* issued by the *Employer*. The latest Programme issued by the Construction Manager supersedes previous Programmes."

11.2(11) Insert at the end: ", and "Providing the Works" is construed accordingly"

Insert new definitions as follows:

"11.2(11A) Regulator is the Office of the Gas and Electricity Markets ("Ofgem") or any person or persons or body appointed to regulate the gas and/or electricity industry in its place.

11.2(11B) Site is the *site* (including the volumes above and below it) and the property of the *Employer* or Others which is affected by the *works* or used by the *Contractor* in Providing the Works."

Insert new definitions as follows:

"11.2(12A) Statutory Requirements means the requirements placed on the *Employer* or the *Contractor* or affecting or governing the performance of the Works by Applicable Law and/or the Regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters.

11.2(12C) Third Party Agreement is an agreement between the *Employer* and a third party relating to or affecting the *works* including the provision of services, plant or equipment relating to the *works* a copy of which (or relevant extracts from which) the *Employer* has given to the *Contractor*.

11.2(12D) Support Services are the support services including traffic management, logistics and reinstatement works to be provided by the Support Services Contractor on behalf of the *Employer* as more particularly described in the Works Information.

11.2(12E) Support Services Contractor is TKG or such other contractor appointed by the *Employer* to provide support services in respect of the Overall Project.

11.2(12F) TKG is T&K Gallagher Limited (company number 04057938) whose registered office is at Weaste Works, James Corbett Road, Salford, M50 1DE.

11.2(12G) Utilities Regulations are the Utilities Contracts Regulations 2016 SI2016/274 as amended from time to time."

Delete clause 12.1 and replace as follows:

"12.1 In this contract, except where the context shows otherwise

- words in the singular also mean the plural, and the reverse
- words in the masculine also mean the feminine and neuter
- a general expression shall not be limited by any more specific expression preceding or following it
- references to legislation mean such legislation as amended or re-enacted from time to time.
- "including" and "includes" will be without limitation to any foregoing phrase."

Delete clause 12.2 and replace as follows:

"12.2 This contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales."

Insert new clauses as follows:

"12.5 This contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither Party has entered into this contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or

statement (whether made by the other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in this contract. Nothing in this clause 12.5 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

12.6 Periods of time stated in days are reckoned in accordance with Section 116 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009."

Delete clause 13 and replace with the following:

"13.1 Subject to clause 13.4 and clause 14, all communications to or from the *Employer* under this contract must be sent to or from the Construction Manager.

13.2 Subject to clause 13.4, any notice or other communication given under or in connection with this contract is in writing and:

- sent to the relevant party's address by pre-paid first class post, airmail post or mail delivery service providing proof of delivery, in which case service shall be deemed to have occurred at 9.00 a.m. on the second working day after the date of posting;
- delivered to or left at the relevant party's address (but not, in either case, by one of the methods set out in the paragraph above, in which case service shall be deemed to have occurred at the time the notice or communication is delivered to or left at that party's address; or
- sent by e-mail to the relevant party's e-mail address, in which case service shall be deemed to have occurred at the time of sending, except that if an automatic electronic notification is received by the sender informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office, that e-mail will be deemed not to have been served.

The address, e-mail address and representative for each of the Parties the *Employer* is as set out in the Contract Data or as otherwise notified to the other in writing from time to time.

13.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of clause 13.2 were complied with.

13.4 This clause 13 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

13.5 If this contract requires the *Employer* or the *Contractor* to reply to a communication unless otherwise stated in this contract it replies within the *period for reply*.

13.6 The *Employer* replies to a communication submitted or resubmitted to it by the *Contractor* for acceptance. If its reply is not acceptance, the *Employer* states its reasons and 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.

13.7 The *Employer* may extend the *period for reply* to a communication if the *Employer* and the *Contractor* agree to the extension before the reply is due. The *Employer* notifies the *Contractor* of the extension which has been agreed.

13.8 A notification which this contract requires is communicated separately from other communications.

13.9 The *Employer* may withhold acceptance of a submission by the *Contractor.* Withholding acceptance for a reason stated in this contract is not a compensation event."

Insert new clauses as follows:

"14.A1 The *Employer* has delegated its actions under this contract to the Construction Manager such that save as stated in clause 14.A.2:

- a reference to an action of the *Employer* in this contract includes an action by the Construction Manager,
- communications to or from the *Employer* under this contract are sent to or from the Construction Manager and
- the *Contractor* is entitled to rely on any act or omission of the Construction Manager made by the Construction Manager pursuant to or in accordance with this clause 14 as an act or omission of the *Employer*.

14A.2 The *Employer* may (acting on its own behalf and not through the Construction Manager) at any time:

- replace the Construction Manager by notifying the *Contractor* of the name of the replacement;
- remove some or all of the authority delegated to the Construction Manager by notifying the *Contractor* to that effect.

14.A3 The Construction Manager may from time to time on prior notice to the *Contractor* appoint named delegates to perform any specified role or roles of the Construction Manager (including specifying limits of authority) and may vary or remove any such appointment or authority at any time on prior notice to the *Contractor."*

Delete clause 14.3 and replace with the following:

"14.3 No

- communication (including instructions, the Defects Certificate or other certificates),
- acceptance of a communication from the *Contractor*,
- failure to withhold acceptance of, express disapproval of or otherwise comment on a submission or work carried out by the *Contractor* or
- enquiry, inspection, test, comment, consent, decision, approval, sanction or acceptance of the *Contractor's* work

by the *Employer* excludes, limits or otherwise diminishes or changes the *Contractor's* liability under this contract, including the *Contractor's* responsibility to Provide the Works or its liability for Defects."

Delete clause 14.4 and insert "not used".

Delete clause 15 and replace with the following:

"15.1 The *Employer* allows access to and use of the Site to the *Contractor* as necessary for the work included in this contract subject to any constraints stated in the Works Information. Such access will be granted solely for the purpose of the *Contractor* complying with this contract, and will be subject to the *Contractor* complying with all security requirements, policies and procedures communicated to it by the *Employer*.

15.2 The *Contractor* acknowledges that the *Employer* does not guarantee

uninterrupted or exclusive access to or use of the Site.

15.3 The *Employer* gives no warranty as to the access to, condition or fitness for purpose of the Site.

15.4 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the *works*. It co-operates with Others (including the Support Services Contractor) and shares the Site with them as stated in the Works Information. The *Contractor* provides every reasonable facility for such persons to execute their work, provided that the *Contractor* is not obliged to provide any attendances, temporary services and the like to any such persons.

15.5 The *Employer* provides the services and other things as stated in the Works Information, including:

- Support Services, and
- Free Issue Items."

Insert a new clause as follows:

"15A **Free Issue Items**

15A.1 The *Employer* makes available free of charge the Free Issue Items (if any) at the locations and in accordance with the details set out in the Works Information.

15A.2 Where Free Issue Items are made available by the *Employer* no other Plant or Materials from another source are used by the *Contractor* in place of the Free Issue Items without the prior approval of the *Employer*.

15A.3 Save where stated otherwise in the Works Information or where instructed otherwise by the *Employer,* the *Contractor* is responsible for loading Free Issue Items.

15A.4 Delivery of Free Issue Items occurs when the relevant Free Issue Items are collected by the *Contractor* in accordance with the Works Information.

15A.5 Upon completion of collection, such Free Issue Items are at the risk of the *Contractor.*

15A.6 Immediately upon collection the *Contractor* shall carry out a detailed inspection of such Free Issue Items and shall use its reasonable endeavours to advise the *Employer* within 48 hours if any such goods and materials are damaged or defective. Unless otherwise agreed by both Parties, the *Employer* secures the repair, replacement and/or reissue of any such goods and materials as soon as reasonably practicable.

15A.7 If the *Contractor* does not so notify, the *Contractor* is only entitled subsequently to claim that any such Free Issue Items are damaged or defective to the extent that the same could not have been identified by a detailed inspection within such 48 hour period. Subject to the *Contractor* mitigating the effect of such damage or defect (including without limitation using other non-damaged and non-defective Free Issue Items where possible) any such damage or defect is treated as a compensation event. The *Contractor* disposes of any packaging and/or waste arising in accordance with this contract.

15A.8 At Completion the *Contractor* returns to the *Employer* any surplus Free Issue Items."

16.1 Delete "or" at the end of the second bullet point and the full stop at the end of the third bullet point and insert new bullet points as follows:

"
- change the Programme,
- affect the work of the *Employer* or Others,
- result in a breach of any Applicable Law or
- result in the *Employer* incurring any fines, penalties or statutory charges."

Insert a new clause 17 as follows:

"17 Conflicts, ambiguities and inconsistencies

17.1 The *Employer* or the *Contractor* notifies the other as soon as either becomes aware of any conflict, ambiguity or inconsistency in or between the documents which form part of this contract. The *Employer* gives an instruction resolving the conflict, ambiguity or inconsistency and such instruction is not a compensation event.

17.2 If the *Employer* does not give any instruction resolving the conflict, ambiguity or inconsistency, the following order of precedent applies:

- the Form of Agreement,
- these conditions of contract,
- the Contract Data,
- the Works Information,
- the Price List,
- the Programme and
- any other schedule to this Agreement."

Insert a new clause 18 as follows:

"18 Assignment

18.1 The *Employer* is entitled to assign, novate, sub-contract, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this contract.

18.2 The *Contractor* does not assign, novate, sub-contract, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights or obligations under this contract without obtaining the prior written consent of the *Employer* to do so, such consent to be given or withheld at the discretion of the *Employer*, acting reasonably.

18.3 Any restriction on assignment in this clause 18 does not apply to the extent that it would have no effect under The Business Contract Terms (Assignment of Receivables) Regulations 2018."

2. The Contractor's main responsibilities

Delete clause 20.1 and replace with the following:

"20.1 The *Contractor* Provides the Works in accordance with

- the Works Information,
- the other provisions of this contract,

- the Statutory Requirements (including the CDM Regulations)
- best practice guidelines in respect of health and safety as are applicable to the activities comprising the *works*
- relevant British or European Standards or Codes of Practice
- any licences and approvals from Others relating to the *works*
- all health and safety and security policies that apply at the *site* and all lawful and reasonable directions of the *Employer*
- Good Industry Practice and
- so that the plant and equipment forming part of the *works* is capable of operating and being maintained in accordance with Good Industry Practice

and using Plant and Materials which shall

- be new (save where the contract expressly allows the re-use or the use of recycled plant or materials) and of good quality,
- be suitable for the purpose and use for which it is intended as evidenced by or reasonably inferred from the contract, and
- have a rate of deterioration not greater than that to be expected of high quality, well designed and engineered goods and materials,

and

- so as not to put the Employer in breach of the Statutory Requirements
- so that the completed *works* will comply with any performance requirements in the Works Information, the Statutory Requirements, and any licences and approvals from Others relating to the works
- so that the various elements of the *works* (including Plant and Materials) are compatible and are properly co-ordinated and integrated with each other
- using appropriately qualified, trained and experienced personnel
- in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner."

Insert a new clause as follows:

"20.3 The *Contractor*

- complies with any obligations relevant to the works imposed on the Employer by any Third Party Agreement (including obtaining required approvals or consents or executing any work),
- Provides the Works so as not to put the Employer in breach of any Third Party Agreement, and
- indemnifies the Employer against any damages, costs, fees expenses or other losses arising from any breach of a Third Party Agreement caused by the Contractor."

Insert new clauses as follows:

"21.4 The *Contractor* submits the name of each proposed subcontractor to the *Employer* for acceptance. A reason for not accepting the subcontractor is that its appointment will not allow the *Contractor* to Provide the Works or its appointment will not allow the *Contractor* to Provide the Works in accordance with the requirements of this Agreement relating to the *Employer's* health

and safety policies, standards and procedures or if the *Contractor* cannot provide reasonable evidence to the *Employer* that the proposed subcontractor possess the level of experience and knowledge necessary to perform the relevant subcontracted element of the *works* in an appropriate manner. The *Contractor* does not appoint a proposed subcontractor until the *Employer* has accepted it.

21.5 If the *Contractor* subcontracts any of its obligations, then the *Contractor* warrants that it has agreed appropriate provisions in the relevant subcontract to enable the *Contractor* to comply with its obligations under this contract.

21.6 The *Contractor* ensures that any subcontract includes payment terms no less favourable than those set out in Clause 5.

21.7 As soon as the *Contractor* becomes aware of any non-payment to a subcontractor it notifies the *Employer* of the non-payment and provides the *Employer* with written reasons for the non-payment, details of the level of payment withheld and the estimated date for resolution.

21.8 The *Contractor* notifies the *Employer* as soon as it becomes aware (or has reason to believe) that the financial health of any subcontractor engaged in connection with the *works* has substantially deteriorated."

Delete clause 22.1 and replace with the following:

"22.1 The *Contractor* allows access to the Site and stored Plant and Materials to the Construction Manager, the *Employer* and Others authorised by the *Employer* for the purposes of site management, statutory and regulatory inspection, sampling, auditing and such other purposes as the *Employer* may from time to time reasonably require."

Insert new clauses as follows

23 NRSWA

23.1 For the purpose of obtaining any license under NRSWA required for the works the undertaker shall be the *Employer* who for the purposes of NRSWA will be the licensee.

23.2 All other expressions common to NRSWA and to this clause shall have the same meaning as those assigned to them by NRSWA.

23.3 The *Employer* shall obtain any street works licence and any other street works related consent, licence or permission that may be required for carrying out of the works and shall supply the *Contractor* with copies thereof including details of any conditions or limitations imposed.

23.4 The *Contractor* does everything necessary to enable the *Employer* to obtain any relevant street works licence and any other street works related consent licence or permission that may be required for carrying out the *works* and to ensure compliance with any such licence, consent or permission including completing any relevant application, attending any relevant meetings and liaising as required with the relevant statutory authority.

23.5 The *Contractor* shall be responsible for giving to the *Employer* information in due time in respect of any required notice (or advance notice where prescribed) of its proposal to commence any work.

23.6 Any condition or limitation in any licence obtained after the date of this contract shall be deemed to be an instruction under clause 60.1(1) unless such condition or limitation ought to have been reasonably foreseeable as at

the date of the contract to a contractor experienced in carrying out works of a similar nature, size, location and complexity to the *works*.

23.7 Without prejudice to clause 41:

- if the *Contractor* fails to carry out any work of repair or otherwise as required by NRSWA and if in the opinion of the *Employer* that work is required urgently, then the *Employer* is entitled to carry out that work using its own workpeople or by other contractors;
- the cost of rectifying Defects in *works* to the extent that it is subject to NRSWA during the associated reinstatement guarantee periods in accordance with the Specification for the Reinstatement of Openings in Highways (issued by the Highway Authorities and Utilities Committee) shall be borne by the *Contractor*.

23.8 An amount equal to any liability suffered or incurred by the *Employer* arising from any breach of NRSWA caused by the *Contractor* shall be paid by the *Contractor* to the *Employer* or the *Employer* may at its option deduct the same from any monies that are or may become due to the *Contractor*.

24 CDM

24.1 The:

- *Contractor* acts as "contractor"
- the *Employer* acts as "principal designer" and
- the Construction Manager or its duly authorised subconsultant named in the Contract Data acts as the "principal contractor",

for the purposes of and as defined within the CDM Regulations.

24.2 The *Contractor* complies with the requirements of the CDM Regulations in Providing the Works and with directions or requests for information given by the principal designer and the principal contractor."

3. **Time**

Delete clause 30.2 and replace with the following:

"30.2 The *Contractor* notifies the *Employer* when in its opinion Completion has been achieved."

Delete clause 30.3 and replace with the following:

"30.3 The *Employer* decides the date of Completion and certifies Completion within a reasonable time after it considers that Completion has been achieved."

Insert a new clause as follows:

"30.5 During any period when work is stopped following an instruction from the *Employer,* the *Contractor* secures and protects the Site, the *works* and all Equipment, Plant and Materials against any deterioration, loss or damage."

Delete clause 31.1 and replace with the following:

"31.1 The *Employer* provides Programmes to the *Contractor.* The *Contractor* Provides the Works in accordance with the Programmes.

31.2 The *Employer* provides revised Programmes to the *Contractor* at intervals that the *Employer* considers appropriate."

Insert new clauses as follows:

"32 Acceleration

32.1 The *Employer* may instruct the *Contractor* to submit a quotation for acceleration to achieve Completion before the Completion Date. A quotation for an acceleration comprises proposed changes to the Prices. The *Contractor* submits details of its assessment with each quotation.

32.2 The *Contractor* submits a quotation or gives its reasons for not doing so within the *period for reply.*

32.3 When the *Employer* accepts a quotation for an acceleration, it changes the Prices and the Completion Date accordingly and updates the Programme.

33 Omission of work

33.1 The *Employer* may omit any work from the contract at any time and for any reason, including to allow that omitted work to be carried out by Others."

4. **Defects**

Insert a new clause 40A as follows:

"40A Tests and Inspections

40A.1 This clause only applies to tests and inspections required by the Works Information or the Applicable Law.

40A.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Works Information.

40A.3 The *Contractor* and the *Employer* informs the other of each of their tests and inspections before the test or inspection starts and afterwards informs the other of the results.

The *Contractor* informs the *Employer* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Employer* may watch any test done by the *Contractor*.

40A.4 If a test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect and the test or inspection is repeated.

40A.5 The *Construction Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed."

Delete clause 40.2 and replace with the following:

"40.2 The *Employer* may inspect the *works* including any Plant and Materials delivered to the *site* to form part of the *works* at any time and may notify a Defect to the *Contractor* at any time before the *defects date*."

Delete clause 41.3 and replace with the following:

"41.3 After Completion, the *Contractor* corrects Defects within the timescale specified by the *Employer* or, if no timescale is specified, within a time which minimises the adverse effect on the *Employer* and Others, and in any event before the end of the relevant *defect correction period*. The *defect correction period* begins at the date the relevant Defect is notified or, if later, when the

necessary access to the Site has been provided. The *Contractor* notifies the *Employer* of the Defects which have been corrected."

41.4 Insert at the end of clause 41.4: "The *Employers* rights in respect of a Defect which the *Employer* has not found or which has not been notified by either the *Contractor* or the *Employer* by the *defects date* are not affected by the issue of the Defects Certificate and are reserved entirely."

Insert a new clause as follows:

"41.5 The *Employer* is responsible for procuring and maintaining access for the *Contractor* to the Site for the purpose of correcting a Defect. Access is provided subject to clause 15.3."

5. **Payment**

Insert a new clause as follows:

"50.A1 The provisions of this Section 5 are subject to the provisions of Schedule 3 (Self Billing)."

Delete clause 50.1 and replace with the following:

"50.1 The *Employer* assesses the amount due at each *assessment day* up to Completion. Later *assessment days* occur upon a request from either the *Contractor* or the *Employer* until four weeks after the *Employer* issues the Defects Certificate."

Delete clause 50.2 and replace with the following:

"50.2 The *Employer* gives the *Contractor* details of how the amount due has been assessed."

Delete clause 50.4 and replace with the following:

"50.4 The *Employer* corrects any wrongly assessed amount due in a later payment certificate."

Delete clause 50.5 and replace with the following:

"50.5 The *Contractor* has no entitlement to payment for costs incurred in connection with the remedying of Defects at any time."

Delete clause 50.6 and replace with the following:

"50.6 An amount is retained from the *Contractor* in the assessment of each amount due until the *assessment day* after the Defects Certificate is issued. The amount is the *retention* applied to the Price for Work Done to Date. No amount is retained in the assessment made after the Defects Certificate has been issued."

Delete clause 50.7 and replace with the following:

"50.7 The *Employer* is under no fiduciary obligation to the Contractor or any third party with regard to the *retention* and under no obligation to set aside in a separate bank account any amount representing the *retention*.

The *Employer* is entitled to the full beneficial interest in any interest accruing on the *retention* and is under no obligation to account to the *Contractor* for any such interest. Any right of the *Employer* to deduct or to set off any amount (whether arising under any express term of this contract or under any rule of law or of equity) is exercisable against any

monies due or to become due to the *Contractor*, whether or not such monies consist of or include any *retention*."

Insert a new clause as follows:

"50.8 The Prices are inclusive of all charges, VAT and other taxes unless stated otherwise.

Delete clause 51.1 and replace with the following:

"51.1 The due date for payment is the *assessment day*. The final date for payment is 14 (fourteen) days after the due date for payment.

Insert new clauses as follows:

"51.3 The *Employer* certifies a payment not later than 5 (five) days after the due date for payment. The *Employer*'s certificate states the sum it considers to be or have been due at the due date for payment (the "**Notified Sum**") and the basis on which that sum was calculated.

51.4 The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*.

51.5 If the *Employer* does not issue a certificate not later than 5 (five) days after the due date for payment, the *Contractor* may issue a notice to the *Employer* specifying the sum the *Contractor* considers to have been due at the due date for payment and the basis on which that sum is calculated. The sum specified in the *Contractor's* notice becomes the Notified Sum. Where the *Contractor* gives such a notice, the final date for payment of the Notified Sum shall for all purposes be regarded as postponed by the same number of days as the number of days between the date the *Employer* was required to issue its certificate and the date the *Contractor's* notice was given.

51.6 If the Party from whom the Notified Sum is due intends to pay less than the Notified Sum, it gives the other Party a notice not later than 3 (three) days before the final date for payment stating the sum it considers to be due at the date the notice is given and the basis on which that sum is calculated (a "**Pay Less Notice**"). A Party does not withhold payment of a sum due under this contract unless it has given a Pay Less Notice.

51.7 The *Employer* shall be entitled to set off any liability which the *Contractor* has to it against any liability which it has to the *Contractor,* and may recover from the *Contractor* any amounts due from the *Contractor* as a debt.

52 **Defined Cost**

52.1 If the *Contractor* considers that the Price List does not contain a rate or price for any item of Defined Cost, the *Contractor* gives notice to the *Employer* as soon as is reasonably practicable.

52.2 Amounts included in Defined Cost which are not valued by reference to the Price List are at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.3 The *Contractor* keeps the following records:

- accounts of payments of Defined Cost;
- proof that the payments have been made;

- communications about and assessments of compensation events for subcontractors; and
- other records required by the Works Information.

52.4 The *Contractor* allows the *Employer* to inspect at any time within working hours the accounts and records which he is required to keep."

6. **Compensation Events**

Delete clause 60.1(8) and replace with the following:

"60.1(8) The *Employer* 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 doing work obstructing a required test or inspection."

In clause 60.1(9) delete "the *Contractor's* Offer" and insert "the relevant Task Order".

Delete clause 60.1(12) and replace with the following:

"60.1(12) A Prevention Event occurs".

Insert a new clause as follows:

"60.1(15) The *Employer* requires the *Contractor* to comply with a requirement in a Third Party Agreement a copy of which has not been disclosed to the *Contractor* as at the date of this contract. "

Delete the first line and first bullet of clause 61.2 and replace with the following:

"If and to the extent that the *Employer* decides that an event notified by the *Contractor*:

- arises from or is contributed to by a fault of the *Contractor* or a subcontractor, supplier or any other person for whom the *Contractor* is responsible"

In clause 63.2 delete "*Contractor's* Offer" and insert "Contract Data".

Insert a new clause as follows:

"63.2A Notwithstanding any other provision of this contract, there shall be no change to the Prices due to the occurrence of a Prevention Event."

Delete clause 63.8 and replace with the following:

"63.8 An instruction to omit work under clause 34 only entitles the *Contractor* to a change to the Completion Date and to the Defined Cost of the omitted work already carried out. The *Employer* has no liability to the *Contractor* for any loss of profit, loss of overheads, loss of opportunity, loss of contracts or indirect or consequential loss arising out of an omission of work."

7. **Title**

Insert new clauses as follows:

"70.3 Each item of Plant and Materials supplied by the *Contractor* under this contract (if any) shall become the property of the *Employer* upon the earlier of delivery to the *site* and when the value of the item, whether or not delivered to *site*, has been included in a certificate of payment issued by the *Employer* under this contract.

70.4 Delivery of any Plant and Materials shall be effected when such Plant and Materials have been safely unloaded at the *site* and, without prejudice to the

Employer's rights under clause 40.1 and/or 40.2, a duly authorised representative of the *Employer* has accepted the delivery. Risk of loss of or damage to the Plant and Materials shall be with the *Contractor* until the date of Completion.

70.5 No payment is made to the *Contractor* on account of Plant and Materials which are outside the *site* unless stated otherwise in the Works Information.

70.6 The Contractor warrants that it has full clear and unencumbered title to all Plant and Materials provided under this contract (if any) and, that at the date of delivery of the same to the *Employer*, it will have full and unrestricted rights to transfer title in all such items to the *Employer.*"

8. **Indemnity, insurance and liability**

Delete clause 80.1 and replace with the following:

"80.1 Subject to clause 80.2 and 80.3 the *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, is limited to the greater of 100% of the final total of the Prices or £2,000,000 (two million pounds). The exclusion and/or limitation of liability under this clause 80.1 applies in contract, tort or delict and otherwise to the maximum extent permitted by law."

Insert new clauses as follows:

"80.2 The limitations in clause 80.1 do not apply to and do not affect the *Contractor's* liability under or in connection with this contract for

- death or injury to any person to the extent caused or contributed to by the negligence, omission, default or breach of contract of the *Contractor* or any subcontractor,
- fraud or wilful misconduct
- any matter for which it is not permitted by law to exclude or limit or to attempt to exclude or limit its liability
- any amount recoverable under an insurance policy maintained under this contract, up to the relevant amount stated as the minimum amount of cover or minimum limit of indemnity required by this contract or any greater amount of cover that is actually maintained or which would have been so recoverable
  - under insurances maintained by the *Contractor*:
    - if the *Contractor* had maintained insurance as required by this contract or
    - but for any act, omission or default of the *Contractor* rendering such insurances void, voidable or unenforceable whether in whole or in part.
  - under insurances maintained by the *Employer* (if any) but for any act, omission or default of the *Contractor* rendering such insurances void, voidable or unenforceable whether in whole or in part.

80.3 Nothing in this clause 80 or the rest of this contract shall limit or exclude any liability the *Contractor* has arising under the third bullet point of clause 20.1, clause 81.4 or arising from or for loss or destruction of or damage to the *Employer's* real and/or tangible property (howsoever caused).

80.4 Subject always to clause 80.2, the *Employer's* liability to the *Contractor* shall be limited to the total of the Prices."

Delete clause 81 and replace with the following:

"81.1 The *Contractor* is responsible for and indemnifies the *Employer* against all expenses (including legal fees on a full indemnity basis), liabilities, damages, losses (direct and indirect), claims, proceedings, compensation and costs (including costs of any re-tender) whatsoever ("**Losses**") arising out of or in connection with any negligence, breach of contract, or breach of statutory duty including:

- death or injury to any person,
- loss or damage to property (including property belonging to the *Employer* or for which it is responsible)
- any fines or penalties imposed on the *Employer* by the Health and Safety Executive or the Regulator
- any fines or penalties imposed on the *Employer* by any public body or authority, local or national agency, department, ministry, inspection or official (including arising under NRSWA)
- any costs or penalties payable by the *Employer* to its customers
- infringement of any Intellectual Property
- any other Losses arising out of or in connection with the *works*

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, omission, or default by the *Contractor* or any of its subcontractors (of any tier) or its or their employees or agents. The *Contractor's* indemnity under this clause remains in force for the duration of this contract and continues to survive the termination of the provision of the *works* and services by the *Contractor* under this contract and the expiry or termination of this contract.

81.2 The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, its employees or agents."

Insert new clauses as follows:

"82.2 The *Employer* may at any time decide and instruct that the manner in which any *Employer* insurances stated in the Contract Data in accordance with clause 82.1 are to be arranged and maintained is to be changed. In such circumstances the *Employer* issues an instruction specifying how such insurances are to be arranged and maintained.

82.3 To the extent any proceeds from *Employer* insurances relate to costs or other matters that do or will (when incurred) fall to be paid to the *Contractor* in accordance with this contract, such proceeds are paid to the *Employer*. The *Contractor* has right or entitlement to such proceeds save for payment of the Prices in accordance with this contract."

9. Termination

Delete clause 90.2 and replace with the following:

"90.2 Either party may terminate if the other Party has become Insolvent or its equivalent (Reason 1)."

Delete clause 90.5 and replace with the following:

"90.5 The *Employer* may terminate if a Prevention Event occurs and has substantially affected the *Contractor's* work for a continuous period of more than 13 weeks (Reason 8)."

Insert new clauses as follows:

"90.6 The *Employer* may terminate if it considers that any of the circumstances set out in regulation 89(1)(b) of the Utilities Regulations have arisen (Reason 9).

90.7 The *Employer* may terminate if it considers that any of the circumstances set out in regulation 89(1)(a) or (c) of the Utilities Regulations apply (Reason 10)."

92.1 At the start of the third bullet point insert: "50% of".

Delete clause 92.3 and replace with the following:

"92.3 If the *Contractor* terminates for Reason 1, 6 or 7 or if the *Employer* terminates for Reason 5 or 9, the amount due on termination also includes other costs reasonably incurred by the *Contractor* in expectation of completing the whole of the *works* and to which the *Contractor* is committed."

Insert new clauses as follows:

"92.4 The *Employer* has no liability to the *Contractor* for any loss of profit, loss of overheads, loss of opportunity or indirect or consequential loss arising out of a termination for any reason.

92.5 Notwithstanding any other provision of this contract, if the *Employer* terminates because the *Contractor* has become insolvent within the meaning set out in sections 113(2) to 113(5) of the Housing Grants, Construction & Regeneration Act 1996, as amended, the *Employer* need not pay any sum that has become due to the *Contractor* where the *Contractor* becomes insolvent after the last date on which a Pay Less Notice could be given by the *Employer* in respect of that sum.

92.6 Following termination, any *retention* not released to the *Contractor* under clause 93.2 is retained for 2 (two) years from the date of termination. Following expiry of the said 2 (two) year period, the *Contractor* makes an application for payment of the Retention and the due date for payment of the Retention is 21 (twenty one) days after the *Employer's* receipt of such application. The Retention is otherwise paid in accordance with the provisions of clause 51."

Delete the first sentence of clause 93.2(1).

Delete clause 93.3(2) and replace with the following:

"93.3 (2) The Party referring the dispute to the *Adjudicator* includes with its referral information to be considered by the *Adjudicator*."

In clause 93.4 replace the words "four weeks" with "ten weeks".

After clause 93.4, under the heading "**If the United Kingdom Housing Grants, construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction act 20089 (the Act) applies to this contract the following additional conditions apply**" delete clauses 1.1, 1.2 and 1.3.

10. Additional Provisions

Insert new clauses as follows:

"100 **Employer's Step-In Rights**

100.1 The *Employer's* step-in rights are the rights of the *Employer* to take such steps to mitigate risk as it considers fit in its absolute discretion, including (without limitation):

- partially or totally suspending the *Contractor's* obligation to Provide the Works;
- taking over the *Contractor's* obligation to Provide the Works; and/or

terminating the contract and appointing a third party to take over the *Contractor's* obligation to Provide the Works.

100.2 The *Employer* may exercise the *Employer's* step-in rights if:

- a material risk to the health and safety of persons, property or the environment exists;
- there has been or is likely to be a material breach of the Applicable Law; or

there is a material breach of the contract resulting in the reputation or operations of the *Employer* being or likely to be adversely affected.

100.3 If the *Employer's* exercise of the *Employer's* step-in rights results in a suspension of the *Contractor's* obligation to Provide the Works:

- the *Employer* notifies the *Contractor* in writing of the actions to be taken by the *Employer*, the Contractor and Others;
- the *Employer* forthwith secures and protects the affected property, the Works and equipment, Plant and Materials against any deterioration, loss or damage;
- the *Employer* may use any items needed to Provide the Works to which it has title;

and:

- if the *Employer's* step-in rights are exercised as a result of a default, act, omission or breach of the *Contractor* or the *Contractor's* persons, no further payments are made by the *Employer* in respect of the suspended *works* during the period of suspension; or

if the *Employer's* step-in rights are exercised for any reason other than due to a default, act, omission or breach of the *Contractor* or the *Contractor's* persons, the *Contractor* is entitled to be paid the price for work done to date for the work which has been completed as at the date of the suspension.

100.4 If the *Employer's* exercise of the Employer's step-in rights results in a termination of the contract:

- the *Employer* notifies the *Contractor* in writing of the actions to be taken by the *Employer*, the *Contractor* and Others;
- the *Contractor* forthwith secures and protects the affected property, the Works and equipment, Plant and Materials against any deterioration, loss or damage;
- the *Employer* may use any items needed to Provide the Works to which it has title;

and:

- if the *Employer's* step-in rights are exercised as a result of a default, act, omission or breach of the *Contractor* or the *Contractor's* persons, the termination shall be treated as if it were a termination under Section 9 of these conditions of contract for Reason 4.
- if the *Employer's* step-In rights are exercised for any reason other than due to a default, act, omission or breach of the *Contractor* or the *Contractor's* persons, the termination shall be treated as if it

were a termination under Section 9 of these Conditions of Contract for Reason 5.

101 – Changes in the Law

101.1 A change in

- the law of the contract or
- the Applicable Law in which the *site* is located

is a compensation event if it occurs after the date of the contract, unless the change and its effects could reasonably have been anticipated by the *Contractor* prior to the date of the contract. The *Employer* may notify the *Contractor* of a compensation event for a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in law is to reduce the total Defined Cost or otherwise reduce the Prices, the Prices are reduced.

102 – Third Parties

102.1 The Parties to this contract do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it save that any permitted assignee shall be deemed to be a party to this contract.

103 – Construction Industry Scheme

103.1 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Finance Act 2004 (the "Finance Act").

103.2 The *Contractor* provides the information required by the Income Tax (Construction Industry Scheme) Regulations 2005 (SI2005/2045) (the "CIS Regulations") to enable the *Employer* to verify (in accordance with paragraph 6 of the CIS Regulations) whether the *Contractor* under the Finance Act

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

103.3 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration the *Contractor* submits an application for payment which separately identifies the cost of labour and the *Contractor* deducts the relevant percentage from the payment in accordance with the Finance Act and the CIS Regulations.

104 – Trespass and Nuisance

104.1 All operations necessary for the construction and completion of the *works* shall so far as compliance with the requirements of the contract permits be carried on by the *Contractor* so as not to interfere unnecessarily or improperly with:

- the convenience of the public or
- the access to the public or private roads footpaths or properties whether in the possession of the *Employer* or of any other person and with the use of occupation thereof.

104.2 The *Contractor* at all times takes reasonable measures to prevent any trespass, public or private nuisance (including any statutory nuisance as

defined by reference to the Environment Act 1990 as may be amended from time to time or any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the works and assists the *Employer* in defending any relevant action or proceedings which may be instituted.

104.3 The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings compensation and costs whatsoever resulting from any such trespass, nuisance or interference, except only where such trespass, nuisance or interference is the consequence of an instruction of the *Employer* (which is itself not the result of any negligence, default or breach of contract by or on behalf of the *Contractor* or any subcontractor or supplier) and has not been avoided despite the *Contractor* using all reasonable and practical means to avoid the same.

104.4 Without prejudice to any other provision in this contract the *Contractor* advises the *Employer* as soon as possible of any potential liability on account of noise disturbances or other pollution which would be the unavoidable consequence of carrying out the *works* and on possible changes to the *works* to avoid such liability. The *Contractor* complies with any necessary changes to the *works* instructed by the *Employer* to the satisfaction of the *Employer*.

104.5 The *Employer* issues to the *Contractor* such instructions as it considers necessary if any injunction is granted or court order is made in consequence of any such trespass, nuisance or interference.

104.6 The *Contractor* shall among other things in connection with the *works* provide and maintain at its own cost all lights guards fencing warning signs and watching when and where necessary or required by the *Employer* or by any statutory or other competent authority for the protection of the *works* or for the safety and convenience of the public or Others.

105 - Environment

105.1 The *Contractor* hereby warrants and undertakes that with respect to the carrying out of the *works* and the construction and operation of the plant forming part of the *works* and the remedying of Defects therein, there shall be no breach of Environmental Law.

105.2 The *Contractor* further warrants that it shall not introduce or cause to be introduced any substances, debris or materials onto any land (including land adjacent to or near the *site*) or into any stream, river, lake or other body of water which may pollute or contaminate the same or constitute a hazard to the Environment in each case in breach of any Environmental Law.

105.3 In the event of any breach by the *Contractor* of this clause 105.1, the *Contractor* shall forthwith at its own expense, alter, repair or replace any affected *works* or part thereof, or otherwise remedy the breach."

106 - Audit

106.1 The *Contractor* will, for the duration of this contract and for a period of six years thereafter, permit the *Employer* or the representatives of any regulatory authority (each referred to as an "**Auditing Body**"), to have access on demand during normal business hours to the *Contractor's* premises, systems and relevant records as may be reasonably required in order to:

- fulfil any request by any regulatory authority;

- undertake verifications of the accuracy of the charges or identify or investigate suspected fraud;
- undertake verification that the *Contractor* is Providing the Works in accordance with this contract and that the *Contractor* is complying with all other obligations contained in this contract;
- assess and verify the *Contractor's* compliance with all Applicable Law; or
- enable the *Employer* to:
  - fully comply with all Applicable Law (including any accounting, tax and filing obligations);
  - respond to enquiries by any regulatory authority; or
  - deal with enquiries, complaints or claims made by the *Employer's* customers.

106.2 The *Employer* will provide the *Contractor* with at least 5 (five) working days' written notice of its intention to conduct an audit, except in cases of suspected fraud or suspected breach of this contract.

107 - Confidentiality

107.1 The *Contractor* undertakes that it shall keep confidential and shall not, at any time during the term of this contract and for a period of five years after termination of this contract, disclose to any person any confidential information disclosed to the *Contractor*, whether orally or in writing, concerning the business, affairs, customers, clients or suppliers of the *Employer* except as permitted by 107.2 below.

107.2 The *Contractor* may disclose the *Employer's* confidential information:

- to its employees, officers, representatives or advisers to the extent that they need to know such information for the purposes of performing the *Contractor's* obligations under this contract; or
- as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

107.3 The *Contractor* shall ensure that its employees, officers, representatives or advisers to whom it discloses the *Employer's* confidential information comply with this clause 107.

107.4 The *Contractor* shall not use the *Employer's* confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this contract.

108 - Data Protection

108.1 The *Contractor* shall comply with all applicable laws, statutes, regulations, and codes relating to data privacy including, but not limited to, the Data Protection Act 1998, all EU Data Protection Legislation including the General Data Protection Regulation 2016 and the Law Enforcement Directive 2016 ("**DP Relevant Requirements**").

108.2 The *Contractor* shall comply with the *Employer's* data protection policies, procedures and Codes of Conduct for Contractors (available on the *Employer's* website) including any updates as may be available from time to time ("**DP Relevant Policies**").

108.3 The *Contractor* shall have and shall maintain in place throughout the duration of this order its own policies and procedures to ensure compliance with the DP Relevant Requirements and the DP Relevant Policies and will enforce them

where appropriate.

108.4 The *Contractor* shall provide such supporting evidence of compliance with clauses 108.1, 108.2 and 108.3 as the *Employer* may reasonably request and without undue delay, shall notify the *Employer* of any breach of this clause 108.

108.5 The Parties agree that a breach by the *Contractor* of any of its obligations under this clause 108 is a fundamental and repudiatory breach of this contract entitling the *Employer* to terminate the Contractor's obligation to Provide the Works immediately on written notice to the *Contractor* which shall take place immediately or on such longer period of notice as stipulated by the *Employer*. Such right of termination is without prejudice to any other rights and remedies the *Employer* may have at law, equity or under this contract for the *Contractor's* breach.

108.6 The Data Protection Addendum contained in Schedule 6 (GDPR Addendum) shall apply.

109 - Intellectual Property

109.1 All property and copyright in all drawings, designs, patterns, specifications, samples, materials, tools and other data or intellectual property provided by the *Employer* or prepared by the *Contractor* at the request of the *Employer* in connection with this contract ("**Proprietary Materials"**), shall be

- the property of and vest in the *Employer* absolutely from the time of their creation (and the *Contractor* hereby assigns with full title guarantee all such intellectual property rights created by it in the course of Providing the Works,
- used by the *Contractor* solely for the purpose of this contract, and
- sent, if requested, to the *Employer* carriage paid on Completion.

109.2 The *Contractor* shall not disclose any such Proprietary Materials or any data comprised therein to any third party unless expressly required or permitted to do so in writing by the *Employer*.

109.3 The *Contractor* shall indemnify the *Employer* in full in respect of any third party claim relating to breach of intellectual property rights arising from the Provision of the Works or receipt or use by the *Employer* of the *works*.

109.4 The *Contractor* shall ensure that the *works* will be safe and without risk when properly used in accordance with designs and specifications prepared by it.

110 - TUPE

110.1 The Parties do not envisage that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") will apply to this contract. However:

- the *Contractor* will, subject to compliance with Applicable Law, provide to the *Employer* within such timescales as the *Employer* stipulates (acting reasonably) any employee related information in respect of employees assigned to the Provision of the Works which the *Employer* may reasonably require from time to time; and
- in the 6 months prior to expiry of the contract or following receipt of a notice to terminate the *Contractor's* obligation to Provide the Works, the *Contractor* shall not assign any new employees to Provide the Works, or materially alter the terms and conditions of employment of its employees assigned to the contract without the prior consent of the *Employer*;

- the *Contractor* will, keep the *Employer* and any replacement supplier of some or all of the *works* indemnified in full against any losses arising directly or indirectly in connection with any *Contractor* employee who is held or alleges that his employment has or should have transferred to the *Employer* (or such replacement supplier) on any date following the date of this contract; and
- in the event TUPE applies both Parties will comply with their obligations thereunder.

111 - Background Checks

111.1 To the extent permitted by Applicable Law, and as required by the *Employer*, the *Contractor* will vet each member of its personnel involved in Providing the Works (whether employed or otherwise) in accordance with the *Employer's* pre-employment vetting and background checking requirements notified to the *Contractor* from time to time.

112 - Anti-Bribery & Anti-Slavery

112.1 The *Contractor* shall comply with all applicable laws, statutes, regulations, and codes relating to:

- anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**ABAS Relevant Requirements**");
- slavery, servitude, forced or compulsory labour or human trafficking (for the purposes of this clause 112, "**Anti-Slavery Laws**").

112.2 The *Contractor* shall comply with the *Employer's* Anti-bribery and Anti-corruption Policies, and Anti-Slavery Policy contained in the Supplier Code of Conduct (which is available to view on the *Employer's* website) including any updates as may be available from time to time ("**ABAS Relevant Policies**").

112.3 The *Contractor* shall have and shall maintain in place throughout the duration of this contract its own policies and procedures to ensure compliance with the ABAS Relevant Requirements and the ABAS Relevant Policies and will enforce them where appropriate.

112.4 The *Contractor* shall provide such supporting evidence of compliance with Clauses 112.1, 112.2 and 112.3 as the *Employer* may reasonably request and promptly notify the *Employer* of any breach of this clause 112.

112.5 The Parties agree that a breach by the *Contractor* of any of its obligations under this clause 112 is a fundamental and repudiatory breach of this contract entitling the *Employer* to terminate the *Contractor's* obligation to Provide the Works contract immediately on written notice to the *Contractor* (which shall take effect immediately or on such longer period of notice as stipulated by the *Employer*). Such right of termination is without prejudice to any other rights and remedies the *Employer* may have at law, equity or under this contract for the *Contractor's* breach.

113 - Environmental Information Regulations

113.1 The *Contractor* accepts that the *Employer* may be obliged to disclose Information pursuant to the EIR (whether or not the Information is confidential and/or commercially sensitive) without consulting or obtaining consent from the *Contractor*.

113.2 The *Contractor* will (at its own expense) and will procure that any sub-contractors or third parties will (at their own expense) provide the *Employer* with details about and/or copies of all Information that the *Employer* requests within 5 (five) working days of a request from the *Employer* and otherwise

use reasonable endeavours to assist and co-operate with the *Employer* to enable the *Employer* to comply with its obligations under the EIR.

113.3 The *Contractor* will not itself (or allow any sub-contractor or third party to) respond to any person making a request for information under the EIR and shall pass all such requests to the *Employer* within 3 (three) working days of receipt."

SCHEDULE 3

Self-Billing

1. **Background**

1.1 Invoicing and payment in respect of *works* provided under this Agreement shall be undertaken under the terms of a self-bill process agreement as further detailed below.

1.2 The Employer may amend or replace such self bill process from time to time and such amended or replacement process shall thereafter be incorporated into this Agreement, save that the period within which payment shall be made by the Employer to the Contractor as stated in this Agreement shall not be increased under any such amended or replacement process.

1.3 To use these arrangements, the Employer does not need to seek prior approval from HMRC, but does have to meet certain conditions.

1.4 The self-billed invoice must:

1.4.1 be provided under a written agreement with the Contractor.

1.4.2 contain all the relevant details included on an invoice including:

1.4.2.1 contractor name and address;

1.4.2.2 employer name and address;

1.4.2.3 sequential serial number;

1.4.2.4 date of issue;

1.4.2.5 price;

1.4.2.6 a description of goods/services supplied;

1.4.2.7 VAT registration number;

1.4.2.8 the rate of VAT;

1.4.2.9 the amount payable exc. VAT;

1.4.2.10 the amount of VAT charged; and,

1.4.2.11 the gross amount payable.

1.4.3 relate to supplies made by the Contractor who is registered for VAT

1.4.4 be marked "THE VAT SHOWN IS YOUR OUTPUT TAX DUE TO REVENUE & CUSTOMS"

2. **Self-Bill Agreement**

2.1 The Employer agrees:

2.1.1 to issue self-billed invoices for all supplies made to them by the Contractor under this Agreement until the final payment is due in accordance with clause 50 of the Conditions of Contract;

2.1.2 to complete self-billed invoices showing the Contractor's name, address and VAT registration number, together with all the other details which constitute a full VAT invoice;

2.1.3 to make a new self-billing agreement in the event that their VAT registration number changes; and

2.1.4 to inform the Contractor if the issue of self-billed invoices will be outsourced to a third party.

2.2 The Contractor agrees:

2.2.1 to accept invoices raised by the self-biller on their behalf until the date stated in paragraph 2.1.1 above.

2.2.2 not to raise sales invoices for the transactions covered by this Agreement;

2.2.3 to notify the customer immediately if they

2.2.3.1 change their VAT registration number;

2.2.3.2 cease to be VAT registered; or

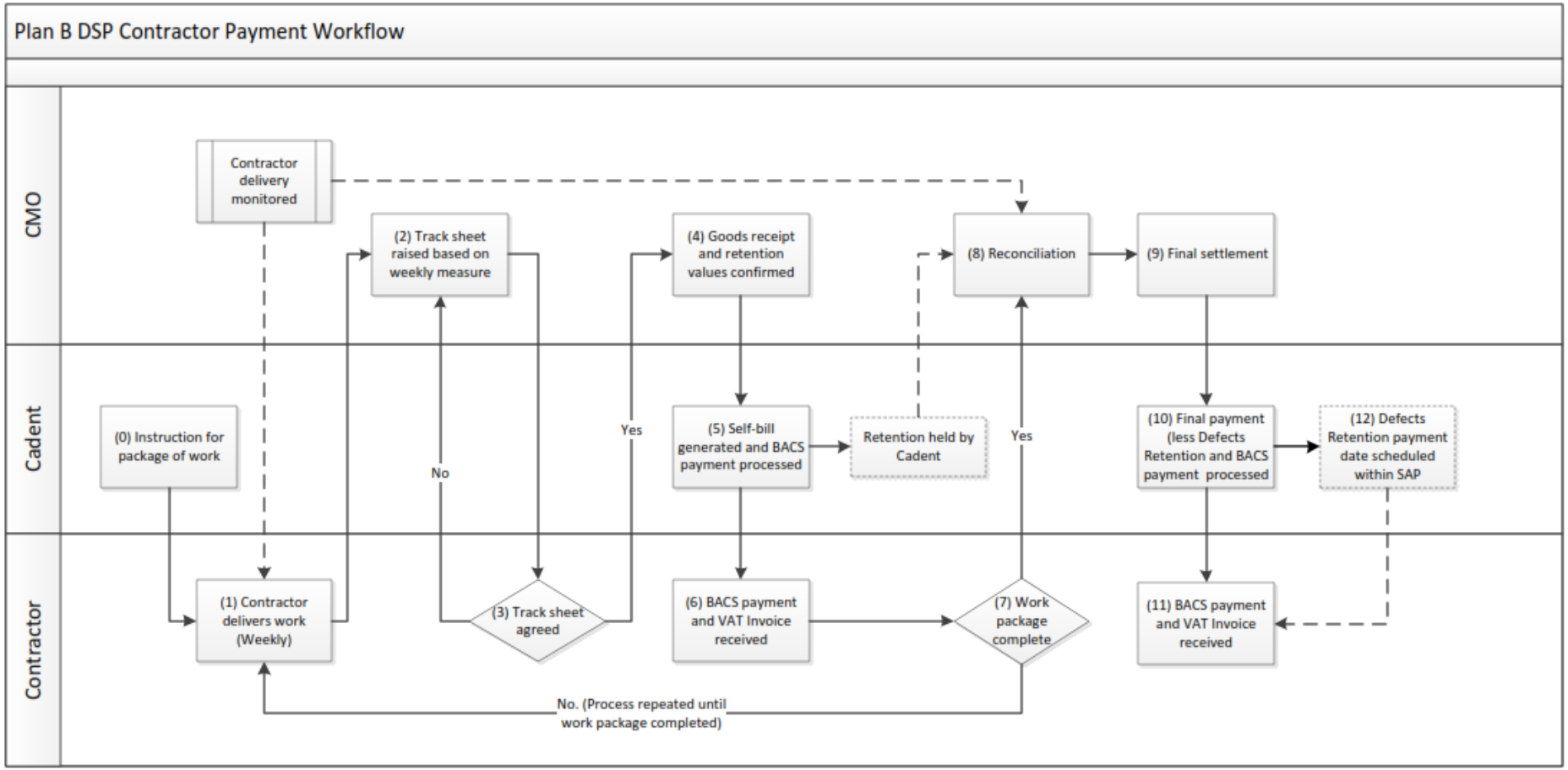
2.2.3.3 sell their business, or part of their business.

3. **Self-Billing Process**

3.1 The self-billing process and timeline is set out in Annex 1 to this Schedule.

3.2 The form of self-billing agreement to be signed by the Contractor is attached at Annex 2 to this Schedule.

Annex 1 to Schedule 3 (Self-Billing Process and Timeline)



Plan B DSP Contractor Payment Profile

		Week 1							Week 2							Week 3							Week 4							Week 5					
		M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
Week 1	Activity	Week 1 Work Commenced				Week 1 Tracksheets (T/S) Measured by the CMO Site Manager.	n/a	Cut off for submission of T/S	Week 1 T/S received by CMO and approved.	Week 1 Payment value Goods Received by Cadent and release for self bill invoice generation				n/a		Week 1 BACS payment by processed by Cadent		Week 1 BACS payment released	Week 1 payment received by Contractors	n/a						n/a						n/a	
	Process Linkage	1	1	1	1	1,2	n/a		3	4,5				n/a		5		5	6	n/a						n/a						n/a	
Week 2	Activity						n/a		Week 2 Works Commenced				Week 2 Tracksheets (T/S) Measured by the CMO Site Manager.	n/a	Cut off for submission of T/S	Week 2 T/S received by CMO and approved.	Week 2 Payment value Goods Received by Cadent and release for self bill invoice generation				n/a		Week 2 BACS payment by processed by Cadent		Week 1 BACS payment released	Week 2 payment received by Contractors	n/a						n/a
	Process Linkage						n/a		1	1	1	1	1,2	n/a		4	4,5				n/a		5		5	6	n/a						n/a
Week 3	Activity						n/a							n/a		Week 3 Works Commenced				Week 3 Tracksheets Measured by the CMO Site Manager	n/a	Cut off for submission of T/S	Week 3 T/S received by CMO and approved.	Week 3 Payment value Goods Received by Cadent and release for self bill invoice generation				n/a		Week 3 BACS payment by processed by Cadent		Week 3 BACS payment released	Week 3 payment received by Contractors	n/a
	Process Linkage						n/a							n/a		1	1	1	1	1,2	n/a		4	5				n/a		5		5	6	n/a

Annex 2 to Schedule 3 (Self-Billing Agreement)

Self Billing Agreement

This is an agreement to a self-billing procedure between

Custome name		VAT number	

and

Supplier name		VAT number	

The self-biller (the customer) agrees:

1. To issue self-billed invoices for all supplies made to them by the self-billee (the supplier) until __/__/____ *(insert **either** an end date for the agreement **or** the date your contract ends).*

2. To complete self-billed invoices showing the supplier's name, address and VAT registration number, together with all the other details which constitute a full VAT invoice.

3. To make a new self-billing agreement in the event that their VAT registration number changes.

4. to inform the supplier if the issue of self-billed invoices will be outsourced to a third party.

The self-billee agrees:

1. To accept invoices raised by the self-biller on their behalf until __/__/____ *(insert **either** an end date for the agreement **or** the date your contract ends).*

2. Not to raise sales invoices for the transactions covered by this agreement.

3. To notify the customer immediately if they
   - change their VAT registration number
   - cease to be VAT registered, or
   - sell their business or part of their business

Signed by	.....	Signed by	.....
On behalf of	.....	On behalf of	.....
Date	.....	Date	.....

SCHEDULE 4

Works Information

[To be inserted]

SCHEDULE 5

Price List

[To be inserted]

SCHEDULE 6

GDPR Addendum

1. **Definitions**

1.1 In this Addendum, the following terms have the meanings set out below:

(a) **"Addendum"** means the provisions of this Schedule.

(b) **"Data Protection Laws"** means applicable legislation protecting the Personal Data of natural persons, including in particular the Data Protection Act 1998 and any replacement to it (and, from 25 May 2018, the GDPR), together with binding guidance and codes of practice issued from time to time by relevant supervisory authorities;

(c) **"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data including where applicable any local implementing laws as updated from time to time;

(d) **"Services"** means the works or services which are provided by the Contractor to the Employer in accordance with this contract; and

(e) The terms **"Data Controller"**, **"Data Processor"**, **"Data Subject"**, **"Personal Data"**, **"Personal Data Breach"** and **"Process/Processing"** have the same meaning as described in the Data Protection Laws.

2. **Description of Personal Data Processing**

2.1 The Employer hereby appoints the Contractor as Data Processor in relation to the Processing of Personal Data and the Parties agree to act in accordance with their respective obligations under this Addendum.

2.2 Section 5 of this Addendum sets out the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subject as required by Article 28(3) of the GDPR or equivalent provisions of any Data Protection Laws.

3. **Data Processing Terms**

3.1 In the course of providing the Services to the Employer under this contract, the Contractor shall observe all its obligations under the Data Protection Laws which arise in connection with the provision of the Services.

3.2 From the 25th May 2018, where the Contractor Processes Personal Data for the Employer as a Data Processor, it shall:

3.2.1 Process the Personal Data solely on the documented instructions of the Employer, for the purposes of providing the Services (unless required by law to act without such instructions, in which case Contractor shall, except where prohibited by law from doing so, inform the Employer of that legal requirement before Processing);

3.2.2 Process only the types of Personal Data, relating to the categories of Data Subjects, and in the manner required to deliver the Services, as described in the form referred to in section 2;

3.2.3 take all measures required by Article 32 of the GDPR to ensure the security of the Personal Data;

3.2.4 take reasonable steps to ensure the reliability of any staff who may have access to the Personal Data, and their treatment of the Personal Data as confidential;

3.2.5 not transfer the Personal Data to any country outside the European Economic Area (EEA) without the prior written consent of the Employer;

3.2.6 not permit any third party to Process the Personal Data without the prior written consent of the Employer, such consent to be subject to the Contractor meeting the conditions set out in Article 28 (2) and (4) of the GDPR;

3.2.7 notify the Employer without undue delay and in any event, within 3 (three) working days, of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a supervisory authority) relating to either Party's obligations under the Data Protection Laws in respect of the Personal Data;

3.2.8 notify the Employer immediately upon becoming aware of or reasonably suspecting any Personal Data Breach, such notice to include all information reasonably required by the Employer to comply with its obligations under the Data Protection Laws;

3.2.9 upon requests, provide the Employer with reasonable assistance in carrying out data protection impact assessments;

3.2.10 permit the Employer, on reasonable prior notice, to inspect and audit the facilities and systems used by the Contractor to Process the Personal Data, the technical and organisational measures used by the Contractor to ensure the security of the Personal Data and any and all records maintained by the Contractor relating to that Processing;

3.2.11 provide any assistance reasonably requested by the Employer in relation (i) any communication received under section 3.2.7, as well as any similar communication received by the Employer directly; and (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures reasonably requested by the Employer; and

3.2.12 cease Processing the Personal Data immediately upon the termination or expiry of the Principal Agreement and at the Employer's option either return, or securely delete the Personal Data.

4. Personal information

4.1 This section 4 addresses certain details of the Processing of the Personal Data as required by Article 28(3) GDPR or equivalent provisions of any Data Protection Law. The Contractor shall Process the Personal Data for the purposes of providing the Services as set out in this contract.

4.2 The Parties agree that in the course of providing the Services, potentially the following types of personal data could be Processed:-

Name, gender, job title, age, personal contact details (address, telephone number, email address, IP address), work contact details (telephone number, email address), personal lifestyle data or interests, photographs, browser generated information, personal data contained in meeting, telephone or attendance notes and any other information which the Contractor has a legitimate interest in Processing in accordance with the provision of the Services.

4.3 The Parties agree that the categories of Data Subject to whom section 4.2 relates includes the Employer’s current and former directors, employees, contractors, sub-contractors, professional advisers, workers, and all other individuals employed or engaged by any of the Employer’s contractors, sub-contractors or professional advisers. The Parties

acknowledge that from time to time, Data Subjects could include members of the public provided this is necessary for the provision of the Services.

4.4 The obligations and rights of the Data Controller are set out in this contract and this Addendum.

5. **General**

5.1 Any breach of this Addendum shall constitute a material breach of this contract.

5.2 The provisions of this Addendum are supplemental to the provisions of the conditions of contract and shall not reduce the Contractor's obligations under the conditions of contract in relation to the protection of Personal Data. In the event of inconsistencies between the provisions of this Addendum and the provisions of the conditions of contract the provisions of this Addendum shall prevail. Compliance by the Contractor with the provisions of this Addendum will be at no additional cost to the Employer.