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**Dated:** 2021

(1) Cadent Gas Limited

(2) [REDACTED]

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**Local Delivery Partner Contract**

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relating to Mains Replacement Works in [REDACTED]

Contract Number: [REDACTED]

**Key**

Items to be completed **prior to issuing the contract to tenderers** are highlighted yellow<sup>1</sup>  
Items to be completed prior to entering into the contract are highlighted green

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<sup>1</sup> This note and all other notes highlighted yellow to be completed/deleted as applicable **prior** to issue to bidders.

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**THIS AGREEMENT** is made the                      day of                      2020

**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 "**Client**").
- (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 *Client* is undertaking a programme of mains replacement and associated work comprising [Tier 1 (<=8" dia) and associated T2/T3 pipework replacement as required in compliance with policy]<sup>2</sup> in order to achieve mains replacement targets set by the Health and Safety Executive and Ofgem for the *Client* ("**Overall Project**").
- (B) The *Client* 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 *Client* to the *Contractor* receipt of which the *Contractor* acknowledges:

1. **DEFINITIONS**

1. 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 Fourth Edition June 2017 (with amendments January 2019 and October 2020) subject to the amendments attached to this Agreement;
- 2.1.2 the Contract Data attached to this Agreement; and
- 2.1.3 the Schedules to this Agreement.

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

- 2.3 The *Client* 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.

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<sup>2</sup> **Note to be deleted prior to issue of contract to tenderers:** Insert summary of work to be carried out under this contract

4. **ELECTRONIC SIGNATURE**

4.1 Each Party agrees that:

4.1.1 for the purposes of the execution of this Agreement an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) shall be accepted by each Party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this Agreement;

4.1.2 this Agreement may be electronically dated and completed; and

further to completion of this Agreement each party will accept an electronic copy of the executed and completed Agreement in lieu of a hardcopy document.

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

Signed )  
for and on behalf of )  
**CADENT GAS LIMITED** )

---

Signature of director/officer

---

Print name

Signed )  
for and on behalf of )  
**[CONTRACTOR]** )

---

Signature of director/officer

---

Print name

# Contract Data

## The *Client's* Contract Data

### The *Client* is

Name

Cadent Gas Limited (10080864)

Address for communications

Ashbrook Court Prologis Park, Central Boulevard, Coventry, United Kingdom, CV7 8PE

Address for electronic communications

### The Construction Manager is

Name

Address for communications

Address for electronic communications

### The Principal Contractor is

Name

The Construction Manager

Address for communications

Address for electronic communications

### The Principal Designer is

Name

The ***Client/Construction Manager*** (delete as applicable)<sup>3</sup>

Address for communications

<sup>3</sup> **Note to be deleted prior to issue of contract to tenderers:** For MRP, the normal position will be that the CMO will be Principal Designer following issue of the Draft AWS to the CMO by Cadent. For Non-MRP Work the normal position will be that Cadent will be Principal Designer. In each case this must be confirmed on a case by case basis.

# Contract Data

## The *Client's* Contract Data

Address for electronic communications



The *works* are

Described in the Scope attached at Schedule 2 of this Agreement (subject to clause 103)

The *site* is

The parts of the *Client's* gas distribution network as more particularly described on a site by site basis in the Scope comprising the location where the *works* are to be carried out including the volumes above and below it and the property of the *Client* or others which is affected by the *works* or used by the *Contractor* in Providing the Works.

The *starting date* is



The *completion date* is



Provided that notwithstanding the date stated above, under this contract a period of time may be fixed for achieving Completion of any Scheme or other element of work following the date from which the relevant *works* are to be commenced in accordance with the Scope and the *Contractor* performs such *works* so that Completion is achieved in respect of those *works* within such period of time.

Where there is no such period is stated for any Scheme or other element of work, the *Contractor* carries out the *works* relating to the relevant Scheme or other element of work in accordance with Good Industry Practice and in compliance with any response times for carrying out such work required by this contract and so that Completion is achieved in accordance with any other relevant provision of the contract.

The *delay damages* are



per day

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 Laws 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

<sup>4</sup> **Note to be deleted prior to issue of contract to tenderers:** This is the date when the whole of the *works* are to be Completed – i.e. the end of the 6/9 month construction period. Individual Schemes forming part of the *works* are to be completed in accordance with clause 30.1.

<sup>5</sup> **Note to be deleted prior to issue of contract to tenderers:** Delay damages will run from the Completion Date (i.e. the end of the 6/9 month construction period) and not linked to individual Schemes.

# Contract Data

## The *Client's* Contract Data

(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

- 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 *defect correction period* is

[24]

hours for emergency defects

[72]

hours for urgent defects

[2]

weeks for other defects

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does/does not apply?  
(delete as applicable)

The *assessment day* is the

date stated in Schedule 3 (Payment Process)

The *retention* is

5

%

The interest rate on late payment  
is

1

% per annum above the base rate of Barclays  
Bank Plc

The place where weather is to be  
recorded is<sup>6</sup>

[ ]

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 14:00 hours GMT

and these measurements:

Not applicable

The *weather measurements* are  
supplied by

[ ]

The *weather data* are the records of past *weather measurements* for each calendar month

which were recorded at

[ ]

and which are available from

[ ]

<sup>6</sup> **Note to be deleted prior to issue of contract to tenderers:** The information to be inserted here by Cadent should be consistent with the relevant CMO contract for the applicable Network.

# Contract Data

## The *Client's* Contract Data

Where no recorded data are  
available

Assumed values for the ten year weather return *weather data* for  
each *weather measurement* for each calendar month are: Not  
applicable

The *Client* 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.	£10k  £2m per item (Sub limit)	The certificate of Completion has been issued	The policy shall name the <i>Client</i> , the <i>Contractor</i> and the <i>Contractor's</i> consultants and sub-contractors of any tier as co- insured.  To include Terrorism.  Insures to have a minimum security rating of A- at inception, as assessed by Standard and Poors
All sums which the Insured shall become legally liable to pay arising directly or indirectly in connection with <i>works</i> in respect of  - death, bodily injury, disease suffered by any person  - loss of or damage to property (including existing structures)  obstruction, interference, loss of amenity, nuisance, trespass, stoppage of traffic, infringement of right, easement or quasi- easement, denial of access or any like cause.	£50M each and every occurrence and in the annual aggregate for sudden and accidental pollution	£10K	The certificate of Completion has been issued	The policy shall name the <i>Client</i> , the <i>Contractor</i> and their consultants and the <i>Client's</i> and <i>Contractor's</i> Sub- Contractors of any tier as co- insured  Multiple Insured – cross liabilities clause  Insurers to have minimum security rating of A- as assessed by Standard and Poors (or an equivalent rating by AM Best)

# Contract Data

## The *Client's* Contract Data

The minimum amount of cover for the third insurance stated in the Insurance Table is, for any one event

£10,000,000 (ten million pounds)

The minimum amount of cover for the fourth insurance stated in the Insurance Table is, for any one event

£10,000,000 (ten million pounds)

The *Client's* Senior Representative is

*Client:* [REDACTED]

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 *Client* and the *Contractor* submit to the exclusive jurisdiction of the Courts of England and Wales

If the *tribunal* is arbitration, the arbitration procedure is

Not applicable

The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017 (with amendments January 2019 and October 2020) and the following additional conditions

The amendments and additional conditions attached to this Agreement

# Contract Data

## The *Contractor's* Contract Data

The *Contractor* is

Name

Address for communications

Address for electronic  
communications

Name and contact details for  
insurance related communications

Name

Address for communications

Address for electronic  
communications

The *fee percentage* is

in respect of the cost of people

 %

in respect of payments to subcontractors

 %

in respect of other costs

 %

The *Contractor's Senior  
Representative* is

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

The total of the Prices is

## Price List

The Price List is in Schedule 1 attached to this Agreement.

## Scope

The Scope is in Schedule 2 attached to this Agreement.

## Site Information

The Site Information is in [ ]<sup>7</sup>

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<sup>7</sup>**Note to be deleted prior to issue of contract to tenderers:** Insert description of document which includes the Site Information (or will state the Site Information). NB Site Information is information about the Site and is generally *not* Scope.

# Conditions of Contract

These amended conditions of contract are based on the NEC family of contracts the copyright or which belongs to the Institution of Civil Engineers

## 1. GENERAL

### Actions

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- 10.1 The Parties shall act as stated in this contract.
- 10.2 The Parties act in a spirit of mutual trust and co-operation.

### Identified and defined terms

11

- 11.1 In these *conditions of contract*, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2 (A1) Applicable Law is 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.  
  
(A2) Ariba Network is the hosted service used by the *Client* for the purposes of administering contract payment and other processes or such other service notified by the *Client* to the *Contractor* from time to time.  
  
(A3) 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.  
  
(A4) Client Equipment is items provided by the *Client* for use by the *Contractor* to Provide the Works and which the Scope does not require the *Contractor* to include in the *works*.  
  
(1) Completion is when the *Contractor* has done all the work which the Scope states it is to do in respect of the relevant *works* (including supplied all the documents and information which the Scope states it is to supply in respect of those *works* and any other pre-conditions to Completion stated in the Scope have been satisfied) except for correcting notified Defects which do not prevent the *Client* from using the *works* or others from doing their work.  
  
(2) The Completion Date is the *completion date* unless later changed in accordance with the contract.  
  
(2A) Conflict of Interest is a (potential or actual) direct or indirect financial, economic or other personal interest of the *Contractor* or any individual employed by or engaged by the *Contractor* which might be perceived to compromise the impartiality or independence of the *Contractor*.  
  
(2B) Contractor Equipment is items provided and used by the *Contractor* to Provide the Works and which the Scope does not require the *Contractor* to include in the *works*.  
  
(2C) Construction Manager is the *Construction Manager* or such other person appointed by the *Client* as notified by the *Client* to the *Contractor* from time to time in accordance with clause 14 acting through the individuals notified by the *Client* to the *Contractor* prior to the date of the contract or as updated by the *Client* from time to time.  
  
(3) Covid-19 is the outbreak and/or spread of the virus strain known as severe acute respiratory syndrome coronavirus 2 (SRAS-CoV-2) including any strains, variants or mutations thereof which causes the disease known as coronavirus disease 2019 (COVID-19).  
  
(3A) Data Protection Laws has the meaning given to it in Schedule 4 and references to "Controller", "Data Subjects", "Personal Data", "Process", "Processed", "Processing" and "Processor" have the meanings set out in, and will be interpreted in accordance with Data Protection Laws.

(4) A Defect is a part of the *works* which is not in accordance with the Scope or the *Contractor's* obligations under the contract.

(5) The Defects Certificate is either a list of Defects that the *Client* has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

(6) Defined Cost is the cost of the following components incurred by the *Contractor* in Providing the Works (following deductions for all discounts, rebates and taxes which can be recovered) in each case less Disallowed Cost.

- The cost of people employed directly or indirectly by the *Contractor* on the *site*.
- Payments for purchasing Plant and Materials and delivery to the *site*.
- For work subcontracted by the *Contractor*, the amount paid by the *Contractor* to the subcontractor.
- Payments for Equipment on *site* including the cost of consumables and transporting Equipment to and from the *site* other than for repair and maintenance.

Provided that the amount payable by the *Client*: (i) does not exceed open market or competitively tendered rates; (ii) in respect of hire costs for any item, does not exceed the purchase cost of that item; and (iii) unless agreed otherwise by the *Client*, where items are acquired from group companies is valued at cost and excludes fee and group profit.

(6A) Disallowed Cost is cost which the *Client* acting reasonably decides

- relates to overhead and profit (which are provided for within the Fee),
- 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 the contract,
  - give an early warning which the contract required him to give, or

and the cost of

- fines or other penalties incurred by the *Contractor* (including pursuant to NRSWA Laws),
- correcting Defects at any time,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage), unless resulting from a change to the Scope,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the *site* when the *Client* requested,
- any amount not recovered from an insurer (including without limitation any deductibles or excess) which is borne by the *Contractor*.

(6B) 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 codes of practice issued in relation to such legislation from time to time.

(7) Equipment means either Contractor Equipment or Client Equipment (as applicable and as the case may be).

(7A) 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).

(7B) 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.

(8) The Fee is the amount calculated by applying the relevant *fee percentage* to the amount of Defined Cost.

(8A) Free Issue Items are items of Plant and Materials, and Client Equipment (as applicable and as the case may be) that are identified by the *Client* as constituting Free Issue Items.

(8B) Good Industry Practice is the standards, practices, methods and procedures conforming to all Applicable Laws 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.

(8C) Information is 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 *Client* or the contract.

(8D) Information Barriers are information barriers created by the *Contractor* in order to comply with clause 114 to prevent any Conflict of Interest in each case as approved from time to time by the *Client*.

(8E) 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.

(8F) Intellectual Property Rights are patents, semi-conductor topography, trademarks, service marks, logos, trade secrets, trade names, Internet domain names, un-patented know-how, rights of confidence, copyright (including rights in computer software) and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, utility models, rights in get-up, rights in inventions, rights in know-how or any similar rights or any other intellectual or industrial property right of any nature whatsoever or property in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property.

(8G) Key Performance Indicators are the key performance indicators set out in Schedule 6 (Key Performance Indicators), as may be updated from time to time by the *Client*.

(8H) Living Wage Foundation is the living wage foundation of 136 Cavell Street, London E1 2JA (or any replacement).

(8I) Losses are all (i) expenses, liabilities, losses, damages, penalties, compensation and (ii) costs arising from or as a result of orders, awards, claims and proceedings.

(8J) NRSWA Laws is the New Roads and Street Works Act 1991 (as amended) and the Traffic Management Act 2004 together with any statutory additions, modifications, re-enactments or replacements of or relating to either, and together with any like Applicable Laws, and all other Applicable Laws and guidance arising from or relating to any of the foregoing.

(8K) Ofgem is the Office of the Gas and Electricity Markets ("Ofgem") or any person or persons or body appointed to regulate the gas industry in its place.

(8L) Others are people or organisations who are not the *Client*, the *Adjudicator*, the *Contractor*, the Construction Manager or any employee, subcontractor or supplier of the *Contractor*.

(9) The Parties are the *Client* and the *Contractor*.

(10) Not used.

(11) Plant and Materials are items intended to be included in the *works* (and excludes Client Equipment and Contractor Equipment).

(11A) Prevention Event is an event which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date shown on the Programme

and which

- neither Party could prevent and
- an experienced contractor would have judged at the date of the contract exercising Good Industry Practice 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
  - fire, explosion or flood,
  - war, insurrection, civil commotion, act or threat of terrorism, blockade or embargo,
  - epidemic or pandemic other than Covid-19,
  - a Subsequent Covid-19 Event,
  - strikes, lock-outs and industrial disputes (other than those primarily involving the employees of the *Contractor* or any of its Subcontractors),
  - shortage of fuel on a national level, or
  - the exercise after the *starting date* by the United Kingdom Government of any statutory power (other than due to Covid-19) 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*.

(12) The Price for Work Done to Date is the total of

- the Price for each lump sum item in the Price List which the *Contractor* has completed
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate
- where applicable in accordance with clause 52.2, the total Defined Cost incurred by the *Contractor* before the assessment date plus the Fee and
- such other amounts calculated in accordance with the Price List in respect of the *works* carried out before the assessment date

in each case subject to the pricing principles stated in the Price List.

(12A) Price List is the *price list* stated in the Contract Data.

(13) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

(13A) Programme is the latest programme for the *works* issued by the *Client*. The latest Programme issued by the *Client* supersedes previous Programmes.

(14) To Provide the Works means to do the work necessary to complete the *works* in accordance with the contract and all incidental work, services and actions which the contract requires.

(14A) Real Living Wage is (as applicable) the basic hourly rates which are set as the "London Living Wage" and the "UK Living Wage" by the Resolution Foundation or another relevant person, body or agency (before tax, other deductions and any increase for overtime) for London and the remainder of the United Kingdom respectively, as may be revised from time to time by the Resolution Foundation or another relevant person, body or agency.

(14B) Scheme is a discrete element of the *works* comprising a separate scheme or project as identified in the Scope.

(15) Scope is information which

- specifies and describes the *works* or
- states any constraints on how the *Contractor* Provides the Works

and is either

- in the document called Scope or

in an instruction given in accordance with the contract.

(15A) Serious Incident is an incident as a consequence of any breach, omission or failure on the part of the *Contractor* under the contract or any other contract with the *Client* where that incident is so serious that its occurrence by its very nature causes serious damage to the reputation of the *Client* including where any such breach, omission or failure comprises or results in

- a substantial unplanned interruption to gas supply
- injury or death of a person or substantial damage to property,
- a substantial breach of health and safety Statutory Requirements,
- evidence on the balance of probabilities of fraud or corruption on the part of the *Contractor* or its employees,
- conviction of the *Contractor* of a criminal offence or
- evidence on the balance of probabilities of misreporting in relation to the provision of any management information, reports or forecasts that are required under the contract.

(16) Site Information is information which describes the *site* and its surroundings and is in the document called Site Information (including where applicable the location of the *Client's* assets).

(17) Statutory Requirements means the requirements placed on the *Client* or the *Contractor* or affecting or governing the performance of the *works* by Applicable Law, Ofgem and any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters.

(18) Third Party Agreement is an agreement between the *Client* 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 *Client* has given to the *Contractor*.

Subsequent Covid-19 Event is a new event after the date of this contract which:

- is a direct and demonstrable result of Covid-19, and
- comprises or results in additional restrictions or subsequent local or national lockdown or similar circumstances implemented due to Covid-19 after the date of this contract.

(19) Utilities Regulations are the Utilities Contracts Regulations 2016 SI2016/274 as amended from time to time.

## Interpretation and the law

- 12.1 In the contract, except where the context shows otherwise
- words in the singular also mean in the plural and the other way round,
  - a general expression is not limited by any more specific expression preceding or following it,
  - “includes” or “including” are without limitation in relation to any foregoing phrase,
  - references to legislation are such legislation as amended or re-enacted from time to time,
  - references to a standard include any current relevant standard that replaces it and
  - references to a document include any revision made to it in accordance with the contract.
- 12.2 The contract is governed by the law of the country where the *site* is.
- 12.3 No change to the contract, unless provided for by these *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 The contract is the entire agreement between the Parties and supersedes any prior negotiations and agreements between the Parties in connection with the *works*. Each Party acknowledges that it has not entered into the contract in reliance on any representation or undertaking given by the other Party or any other person (whether written or oral) which is not expressly set out in the contract.
- 12.5 If any provision of the contract is or becomes illegal, invalid or unenforceable in any respect under Applicable Law the same is deemed to be severable and the remainder of the contract remains valid and enforceable to the fullest extent permitted by law.
- 12.6 Periods of time stated in days are reckoned in accordance with Section 116 of the Housing Grants, Construction and Regeneration Act 1996.

## Communications

### 13

- 13.A1 Subject to clause 14, all communications to or from the *Client* under the contract must be sent to or from the Construction Manager.
- 13.1 Each communication which the contract requires is communicated in a form that can be read, copied and recorded. Communications (other than for a notice of termination or a notice to refer to a dispute) may be given by email or by the communication system specified in the Scope.
- 13.1A If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope, except that where the communication is sent after 4:45pm on a working day or on a day other than a working day in which case it has effect on the next working day.
- 13.1B If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data provided that:
- any communication sent by hand has effect on the date of delivery provided that if any notice sent by hand is sent after 4.45pm on any day it has effect on the next working day,
  - any communication sent by post has effect at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day,
  - any communication sent by email has effect upon sending the email to the address specified except where: (a) the email is sent after 4:45pm on a working day or on a day other than a working day it has effect on the next working day and in proving such service it is sufficient to produce a “delivery confirmation” confirming delivery to the correct address of the addressee; or (b) if an automatic electronic notification is received by the sender informing the sender that the email has not been delivered to the recipient, that email does not have effect. If an out of office is received and no forwarding information to a person with delegated authority is supplied in the out of office, then the email has effect.

- 13.2 If the contract requires the *Client* or the *Contractor* to reply to a communication, unless otherwise stated in these *conditions of contract*, they reply within the *period for reply*.

**The *Client*'s  
authority and  
delegation**

**14**

- 14.A1 The *Client* has delegated its actions under the contract to the Construction Manager such that save as stated in clause 14.A2
- a reference to an action of the *Client* in the contract includes an action by the Construction Manager,
  - communications to or from the *Client* under the 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 *Client*
- 14.A2 The *Client*
- at any time (acting on its own behalf and not through the Construction Manager)
    - replaces the Construction Manager by notifying the *Contractor* of the name of the replacement,
    - removes some or all of the authority delegated to the Construction Manager by notifying the *Contractor* to that effect,
  - does not delegate to the Construction Manager its obligations as "client" or (where the *Client* is named as such in the Contract Data), Principal Designer for the purposes of the CDM Regulations.
- 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*.
- 14.1 The *Contractor* obeys an instruction which is in accordance with the contract and is given by the *Client*.
- 14.2 The *Client* may give an instruction to the *Contractor* which changes the Scope including the omission of work for any reason, including to allow that omitted work to be carried out by Others.
- 14.3 The *Client* gives an instruction to correct a mistake in the Price List which is
- a departure from the method and rules stated in the Price List and used to compile it or
  - due to an ambiguity or inconsistency.
- 14.4 The *Client*'s
- acceptance of a communication from the *Contractor*,
  - acceptance of the work,
  - other communication (including instructions, the Defects Certificate or other certificates),
  - failure to without acceptance of, express disapproval of or otherwise comment on a submission of work carried out by the *Contractor* or
  - enquiry, inspection, test, comment, consent, decision, approval or sanction
- (including where provided on behalf of the *Client* by the Construction Manager in accordance with this clause 14) does not change the *Contractor*'s liability under the contract including its responsibility to Provide the Works or liability for Defects or for its design.

**Early warning**

**15**

- 15.1 The *Contractor* and the *Client* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,

- delay Completion
- impair the performance of the *works* in use
- change the Programme
- affect the work of the *Client*, the Construction Manager or Others
- adversely affect the *Contractor's* ability to safely carry out the *works*
- result in a breach of any Applicable Law or
- result in the *Client* incurring any fines, penalties or statutory charges (including under NRSWA Laws).

The *Client* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor's* total cost. Early warning of a matter for which a compensation event has previously been notified is not required.

- 15.2 The *Contractor* and the *Client* co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.

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**Access to the *site*  
and provision of  
services**

**16**

- 16.1 The *Client* allows access to and use of the *site* to the *Contractor* as necessary for the work included in the contract subject to any procedures and constraints stated in the Scope. Such access is granted solely for the purpose of the *Contractor* complying with the contract, and will be subject to the *Contractor* complying with all security requirements, policies and procedures communicated to it by the *Client*.
- 16.1A The *Client* does not guarantee uninterrupted or exclusive access to or use of the *site*. The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the *works*. It co-operates with Others and shares the *site* with them as stated in the Scope. The *Contractor* provides every reasonable facility for such persons to execute their work, provided that the *Contractor* is not obliged to provide any attendances or temporary services to any such persons.
- 16.2 The *Client* provides services and other things as stated in the Scope including the Free Issue Items subject to and in accordance with clause 72.

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**Corrupt Acts and  
Anti-Slavery**

**17**

- 17.1 The *Contractor* complies with all Applicable Law relating to
- anti-bribery and anti-corruption including the Bribery Act 2010
  - slavery, servitude, forced or compulsory labour or human trafficking including the Modern Slavery Act 2015
- ("ABAS Laws").
- 17.1A The *Contractor* complies with the *Client'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 *Client's* website) including any updates as may be available from time to time ("ABAS Relevant Policies").
- 17.1B The *Contractor* has and maintains in place throughout the duration of the contract its own policies and procedures to ensure compliance with the ABAS Laws and the ABAS Relevant Policies and will enforce them where appropriate.
- 17.2 The *Contractor* takes action to stop a breach of ABAS Laws or ABAS Relevant Policies of a subcontractor or supplier of which it is, or should be, aware.
- 17.3 The *Contractor* includes equivalent provisions to these in subcontracts and contracts for the supply of Plant and Materials and Equipment.
- 17.4 The *Contractor* provides supporting evidence of compliance with this clause 17 reasonably requested by the *Client* and promptly notifies the *Client* of any breach of this clause 17.
- 17.5 Without prejudice to any other rights or remedies of the *Client*, a breach by the *Contractor* of this clause 17 is a substantial failure to comply with the contract which entitles the *Client* to terminate the contract for breach by the *Contractor*.
- 17.6 The *Contractor* indemnifies the *Client* from and against any Losses incurred or suffered by the *Client* arising as a result of or in connection with as a result of or in connection with a breach of this clause 17 by the *Contractor*, provided that the

*Contractor* has no liability to the *Client* under this clause 17 for any loss, liability, cost, damage, expense, claim or proceeding to the extent that it would not have been incurred or suffered but for the *Client's* criminal liability.

## 2. THE CONTRACTOR'S MAIN RESPONSIBILITIES

### Providing the Works

20

20.1 The *Contractor* Provides the Works in accordance with

- the Scope,
- Statutory Requirements,
- best practice guidelines in respect of health and safety,
- any licences and approvals from Others relating to the *works*,
- Good Industry Practice and
- the other provisions of the contract.

#### Plant and Materials

- are new and of good quality,
- are suitable for the purpose and use for which it is intended as evidence 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.

20.2 Not used.

20.3 Save where the Scope states that the *Contractor* is so responsible, subject to the *Contractor* providing such assistance, information and co-operation as is required by the Scope and the other provisions of this contract in relation to the same, the *Client* obtains licences and consents from Others and gives notices to Others which are specific to and required in order for the *Contractor* to be able to Provide the Works under the contract as stated in the Scope including subject to clause 101 consents, licences, approvals, permissions and other requirements under NSW Laws.

### Subcontracting and people

21

21.1 If the *Contractor* subcontracts work, it is responsible for Providing the Works as if it had not subcontracted.

21.2 The contract applies as if a subcontractor's employees and equipment were the *Contractor's*.

21.2A The *Contractor* submits the name of each proposed subcontractor to the *Client* for acceptance.

21.2B A reason for not accepting the subcontractor is that

- its appointment will not allow the *Contractor* to Provide the Works in accordance with the requirements of the contract including the *Client's* health and safety policies, standards and procedures or
- the *Contractor* cannot provide reasonable evidence that the proposed subcontractor possess the level of experience and knowledge necessary to perform the relevant subcontracted element of the *works* in accordance with the contract.

21.2C The *Contractor* does not appoint a proposed subcontractor until the *Client* has accepted it.

21.3 The *Client* may, having stated the reasons, instruct the *Contractor* to remove a person from the contract and any other contract the *Contractor* has with the *Client*. The *Contractor* then arranges that, after one day, the person in question has no further connection with the *works* or any other contract with the *Client*. The *Contractor* indemnifies the *Client* from and against any Losses incurred or suffered by the *Client* as a result of any claim brought against the *Client* by any person as a result of the *Client's* exercise of its rights under this clause, provided that in the case of any person engaged in providing works under the contract the *Contractor's* obligation to indemnify the *Client* applies only to the extent that any such claim results from failure of the *Contractor* to Provide the Works or otherwise perform its obligations under this contract in accordance with Good Industry Practice.

<b>Access for the Client</b>	<b>22</b>	
	22.1	The <i>Contractor</i> provides access for the <i>Client</i> and others named by the <i>Client</i> to work being done for the contract and to stored Plant and Materials.
<b>3. TIME</b>		
<b>Starting and Completion</b>	<b>30</b>	
	30.1	<p>The <i>Contractor</i> does not start work until the <i>starting date</i> and does not start work on the relevant part of the <i>site</i> required for the carrying out of any Scheme or other element of work until the access date for that Scheme or other element of work notified by the <i>Client</i>.</p> <p>Where under this contract a Completion Date is fixed in relation to any Scheme or other element of work then the <i>Contractor</i> does the relevant work so that Completion is on or before the relevant Completion Date.</p> <p>Where under this contract no specific Completion Date is fixed in relation to any Scheme or other element of work, the <i>Contractor</i> carries out that relevant work so that Completion of that Scheme or other element of work is within any period for completing that Scheme or other element of work stated in the contract.</p> <p>Where there is no such period stated for any Scheme or other element of work, the <i>Contractor</i> carries out the relevant Scheme or other element of work in accordance with the relevant timing obligations in the contract (including with Good Industry Practice and in compliance with response times for carrying out such Scheme or other work) and also so that Completion is achieved in accordance with any other relevant provision of the contract.</p>
	30.2	The <i>Contractor</i> submits a forecast of the date of Completion to the <i>Client</i> each week from the <i>starting date</i> until Completion and notifies the <i>Client</i> when in its opinion Completion has been achieved.
	30.3	Subject to any procedure concerning determination and certification of Completion of different categories of <i>works</i> stated in the Scope, the <i>Client</i> decides the date of Completion and certifies it to the <i>Contractor</i> within a reasonable time after it considers that Completion has been achieved.
	30.4	<p>The <i>Client</i> may instruct the <i>Contractor</i> to stop or not to start any work. The <i>Client</i> subsequently gives an instruction to the <i>Contractor</i> to</p> <ul style="list-style-type: none"> <li>• re-start or start the work or</li> <li>• remove the work from the Scope.</li> </ul>
	30.5	During any period when work is stopped following an instruction from the <i>Client</i> , the <i>Contractor</i> secures and protects the <i>site</i> , the <i>works</i> and all Equipment, Plant and Materials against any deterioration, loss or damage.
<b>The programme</b>	<b>31</b>	
	31.1	The <i>Client</i> provides Programmes to the <i>Contractor</i> as stated in the Scope.
	31.2	The <i>Client</i> provides revised Programmes to the <i>Contractor</i> at intervals that the <i>Client</i> considers appropriate or when otherwise stated in the contract.
<b>Acceleration</b>	<b>32</b>	
	32.1	The <i>Client</i> may instruct the <i>Contractor</i> 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 <i>Contractor</i> submits details of its assessment with each quotation.
	32.2	The <i>Contractor</i> submits a quotation or gives its reasons for not doing so within the <i>period for reply</i> .
	32.3	When the <i>Client</i> accepts a quotation for an acceleration, it changes the Prices and the Completion Date accordingly and updates the Programme.
	32.4	If for any reason which does not entitle the <i>Contractor</i> to an extension of time the rate of progress of the <i>works</i> is in the opinion of the <i>Client</i> too slow to ensure Completion by the Completion Date the <i>Client</i> notifies the <i>Contractor</i> in writing. The <i>Contractor</i> takes such

steps as are necessary so as to achieve Completion by the Completion Date. The Prices are not adjusted for the cost of the *Contractor* taking such steps.

#### 4. QUALITY MANAGEMENT

<b>Tests and inspections</b>	<b>40</b>
40.1	The <i>Client</i> and the <i>Contractor</i> carry out tests and inspections required by the Scope or Applicable Law. If a test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect, and the test or inspection is repeated.
40.2	The <i>Client</i> assesses the cost incurred by the <i>Client</i> in repeating a test or inspection after a Defect is found. The <i>Contractor</i> pays the amount assessed.
<b>Searching for and notifying Defects</b>	<b>41</b>
41.1	Until the <i>defects date</i> , the <i>Client</i> may instruct the <i>Contractor</i> to search for a Defect.
41.2	The <i>Client</i> may notify a Defect to the <i>Contractor</i> at any time before the <i>defects date</i> .
<b>Correcting Defects</b>	<b>42</b>
42.1	The <i>Contractor</i> corrects a Defect whether or not the <i>Client</i> has notified it.
42.2	Before Completion, the <i>Contractor</i> corrects a notified Defect before it would prevent the <i>Client</i> or others from doing their work.
42.3	After Completion, the <i>Contractor</i> corrects a notified Defect <ul style="list-style-type: none"> <li>• within the time-scale specified by the <i>Client</i> or</li> <li>• if no time-scale is specified, within a time which minimises the adverse effect on the <i>Client</i> and Others and</li> <li>• in any event before the end of the <i>defect correction period</i>.</li> </ul> <p>This <i>defect correction period</i> begins when the Defect is notified or, if later, when the necessary access to the <i>site</i> has been provided. The <i>Contractor</i> notifies the <i>Client</i> of the Defects which have been corrected.</p>
42.3A	The <i>Client</i> provides access for the <i>Contractor</i> to the <i>site</i> for the purposes of correcting a Defect. Access is provided subject to clause 16.
42.4	The <i>Client</i> issues the Defects Certificate at the <i>defects date</i> if there are no notified Defects, or otherwise at the earlier of <ul style="list-style-type: none"> <li>• the end of the last <i>defect correction period</i> and</li> <li>• the date when all notified Defects have been corrected.</li> </ul>
<b>Accepting Defects</b>	<b>43</b>
43.1	The <i>Contractor</i> and the <i>Client</i> may each propose to the other that the Scope should be changed so that a Defect does not have to be corrected. If the <i>Contractor</i> and the <i>Client</i> are prepared to consider the change, the <i>Contractor</i> submits a quotation for reduced Prices or an earlier Completion Date or both to the <i>Client</i> for acceptance. If the <i>Client</i> accepts the quotation, it changes the Scope, the Prices and the Completion Date accordingly.
<b>Uncorrected Defects</b>	<b>44</b>
44.1	If the <i>Contractor</i> has not corrected a notified Defect within its <i>defect correction period</i> , the <i>Client</i> assesses the cost of having the Defect corrected by other people and the <i>Contractor</i> pays this amount.

## 5. PAYMENT

### Assessing the amount due

#### 50

- 50.A1 The provisions of this Section 5 are subject to the provisions of clause Y(UK)2 and Schedule 3 (Payment Process).
- 50.1 The *Client* assesses the amount due on the *assessment day*. The *Contractor* applies to the *Client* for payment on the dates stated in Schedule 3 (Payment Process). *Assessment days* occur on the dates stated in Schedule 3 (Payment Process) until the earlier of
- the month after the *Client* issues the final Defects Certificate and
  - either Party gives notice to the other to terminate the *Contractor's* obligation to Provide the Works.
- 50.2 The *Contractor's* application for payment includes details of how the amount has been calculated.
- 50.3 If the *Contractor* submits an application for payment on the date for such application determined in accordance with Schedule 3 (Payment Process), the amount due at the *assessment day* is
- the Price for Work Done to Date,
  - plus other amounts to be paid to the *Contractor*,
  - less any amount that the *Client* is required to deduct by law,
  - less amounts to be paid by or retained from the *Contractor*,
  - less any amount previously certified.
- The *Contractor* includes within each application for payment a request for the *Client* to confirm in writing whether the reverse charge applies to the supply to which the application for payment is made. The *Client* provides such confirmation with, or not later than the issue of, the *Client's* certificate relating to such supply.
- 50.4 If the *Contractor* does not submit an application for payment on the date for such application determined in accordance with Schedule 3 (Payment Process), the assessment of the amount due to the *Contractor* is delayed until the next date for submission of applications for payment determined in accordance with Schedule 3 (Payment Process) and the amount due at the *assessment day* is
- zero or
  - if an amount is to be paid to the *Client*, the amount which the *Client* assesses is to be paid .
- If the *Client* assesses an amount due it gives details of the how the amount has been calculated.
- 50.5 The *Client* corrects any incorrectly assessed amount due in a later payment certificate .
- 50.6 The *Contractor* pays *delay damages* for each day from the Completion Date until the earlier of:
- Completion and
  - the date either Party gives notice to the other to terminate the *Contractor's* obligation to Provide the Works.
- 50.7 An amount is retained from the *Contractor* in the assessment of each amount due until the *assessment day* after the Defects Certificate is issued. This 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.

The *Client* 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 *Client* 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 *Client* to deduct or to set off any amount (whether arising under any express term of the 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*.

<b>Payment</b>	<b>51</b>	
	51.A1	The <i>Client</i> certifies a payment on or before the date on which a payment becomes due. The <i>Client's</i> certificate includes details of how the amount due has been assessed.
	51.B1	Within the time period stated in Schedule 3 (Payment Process) the <i>Contractor</i> issues and submits a value added tax invoice (and indicates on the face of such invoice whether or not the reverse charge applies to the supply) through the Ariba Network (or in such other manner as notified by the <i>Client</i> from time to time) in the amount of the <i>Client's</i> assessment.
	51.1	A payment is made within the time period stated in Schedule 3 (Payment Process). The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the <i>Contractor</i> to the <i>Client</i> if the amount due is less than the amount due in the previous assessment. Other payments are made by the <i>Client</i> to the <i>Contractor</i> .
	51.2	Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid. Interest is calculated at the rate stated in the Contract Data or, if none is stated, at 0.5% of the delayed amount per complete week of delay.
	51.3	Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract including, unless the reverse charge applies, that the <i>Client</i> pays to the <i>Contractor</i> the amount of any VAT properly chargeable in respect of such supply.
	51.4	Subject to clause Y1.4, the <i>Client</i> may deduct from any sum due to the <i>Contractor</i> <ul style="list-style-type: none"> <li>• any sum due to the <i>Client</i> from the <i>Contractor</i> and</li> <li>• any amount which the <i>Contractor</i> is liable to pay to the <i>Client</i> (whether liquidated or otherwise) arising under the contract and any other contract entered into by the <i>Client</i> and the <i>Contractor</i>.</li> </ul>
	51.5	Without prejudice to clause 51.4 and any other right or remedy of the <i>Client</i> , the <i>Contractor</i> is liable for the contra-charges payable stated in Schedule 5 (Contra-Charges).
<b>Items not on the Price List</b>	<b>52</b>	
	52.1	If the <i>Contractor</i> considers that the Price List does not contain a rate or price for any item, the <i>Contractor</i> gives notice to the <i>Client</i> as soon as is reasonably practicable.
	52.2	Amounts which are not valued by reference to the Price List are, at the <i>Client's</i> discretion valued <ul style="list-style-type: none"> <li>• using like for like rates including using rates agreed in respect of any other Scheme or contract,</li> <li>• using Defined Cost (subject to the addition of Fee),</li> <li>• following open market or competitive tender, or</li> <li>• using an amount agreed by the Parties as being a reasonable amount representing payments made by the <i>Contractor</i> for the relevant item.</li> </ul>
	52.3	The <i>Contractor</i> keeps the following records <ul style="list-style-type: none"> <li>• accounts of payments of cost referred to in clause 52.2,</li> <li>• where applicable, proof that the payments have been made</li> <li>• where applicable, communications about and assessments of compensation events for subcontractors and</li> <li>• other records required by the Scope.</li> </ul>
	52.4	Without prejudice to clause 105, the <i>Contractor</i> provides copies of and allows the <i>Client</i> to inspect at any time within working hours the accounts and records which it is required to keep.

- 52.5 The Parties may at any time agree an update to the Price List to reflect rates or prices agreed for any item in accordance with this clause 52.

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**Construction  
Industry Scheme**

**53**

- 53.1 The contract falls within the scope of the Construction Industry Scheme provided by Chapter 3, Part 3 of the Finance Act 2004 and the *Contractor* acknowledges that the obligation of the *Client* to make any payment under the contract is subject to the provisions of the Construction Industry Scheme.
- 53.2 By not later than the date of the contract the *Contractor* is to submit to the *Client* evidence proving that the *Contractor* is registered with HM Revenue & Customs under the Construction Industry Scheme ("**CIS Registration**") to allow payments to be made with or without statutory deduction of tax by the *Client*.
- 53.3 If the *Contractor* does not provide such evidence or during the currency of the contract the *Contractor* ceases to possess a CIS Registration or the *Contractor* breaches any of the requirements of the Construction Industry Scheme, this constitutes a substantial failure to comply with the contract which entitles the *Client* to terminate the contract for breach by the *Contractor*.

## 6. COMPENSATION EVENTS

### Compensation events

60

- 60.1 The following events are compensation events in each case save and to the extent that the relevant event is caused or contributed to by any default whether by act or omission of the *Contractor* or its servants, agents or subcontractors either under the contract or under any other contract entered into by the *Client* and the *Contractor*.
- (1) The *Client* gives an instruction changing the Scope unless the change is in order to make a Defect acceptable.
  - (2) The *Client* does not allow access to and use of the *site* to the *Contractor* as necessary for the work included in the contract (at all times subject to any restrictions to such access stated in the contract including the Scope).
  - (3) The *Client* does not provide something which it is to provide by the date stated in the contract.
  - (4) The *Client* gives an instruction to stop or not to start any work.
  - (5) The *Client* or Others do not work within the conditions stated in the Scope, unless the *Contractor* (acting reasonably) consents to the *Client* or Others carrying out work within conditions that are not stated in the Scope.
  - (6) The *Client* does not reply to a communication from the *Contractor* within the period required by the contract.
  - (7) The *Client* changes a decision which it has previously communicated to the *Contractor*.
  - (7A) The *Client* 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.
  - (8) The *Contractor* encounters physical conditions which
    - are within the *site*,
    - are not weather conditions and
    - an experienced contractor would have judged, at the date of the contract, to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.
  - (9) A *weather measurement* is recorded
    - within a calendar month,
    - before the Completion Date for the whole of the *works* and
    - at the place stated in the Contract Data,

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

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.
  - (10) The *Client* notifies the *Contractor* of a correction to an assumption made for the assessment of a compensation event.
  - (11) A Prevention Event occurs.
  - (11A) A Subsequent Covid-19 Event occurs.
  - (12) The *Client* gives an instruction to correct a mistake in the Price List.
  - (13) A change in any applicable statute, Act, order or other law, regulation or bye-law or any rule, code or direction having the force of law after the date of the contract which could not reasonably have been foreseen by the *Contractor* prior to the date of the contract.

(14) The *Client* requires the *Contractor* to comply with a Third Party Agreement, a copy of which has not been disclosed to the *Contractor* as at the date of the contract.

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

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

- the Site Information,
- publicly available information referred to in the Site Information,
- information obtainable from a visual inspection of the *site*
- where the *Contractor* has carried out pre-enabling site surveys in respect of the *site* in accordance with this contract or any other contract with the *Client*, information which an experienced contractor could reasonably be expected to have or to obtain whilst performing such pre-construction work in accordance with the relevant contract and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

<b>Notifying compensation events</b>	<b>61</b>	<p>61.1 The <i>Client</i> and the <i>Contractor</i> notify the other of an event which has happened or which they expect to happen as a compensation event.</p> <p>61.2 If the <i>Client</i> notifies the compensation event, it also instructs the <i>Contractor</i> to submit a quotation for the compensation event. The <i>Contractor</i> submits the quotation within one week of being instructed to do so by the <i>Client</i>. If the <i>Contractor</i> notifies the compensation event, it submits a quotation with the notification.</p> <p>61.3 If the <i>Contractor</i> does not notify a compensation event within four weeks of becoming aware that the event has happened, the Prices and Completion Date are not changed unless the event arises from a correction to an assumption stated by the <i>Client</i> or the <i>Client</i> giving an instruction or changing an earlier decision.</p> <p>61.3A If the <i>Client</i> decides that the <i>Contractor</i> did not give an early warning of the event which the <i>Contractor</i> could have given, the <i>Client</i> notifies that decision to the <i>Contractor</i> when instructing the <i>Contractor</i> to submit a quotation.</p> <p>61.4 A compensation event is not notified by the <i>Client</i> or <i>Contractor</i> after the issue of the Defects Certificate.</p>
<b>Quotations for compensation events</b>	<b>62</b>	<p>62.1 A quotation for a compensation event comprises proposed changes to the Prices and Completion Date assessed by the <i>Contractor</i>. The <i>Contractor</i> submits details of its assessment with each quotation. If the effects of a compensation event are too uncertain to be forecast reasonably, the <i>Contractor</i> states assumptions about the compensation event in the quotation. Assessment of the compensation event is based on these assumptions. If any of them is later found to have been wrong, either Party may notify a correction to the other Party.</p> <p>62.2 The <i>Client</i> replies within two weeks of the <i>Contractor's</i> submission. If and to the extent that the <i>Client</i> decides that an event notified by the <i>Contractor</i></p> <ul style="list-style-type: none"> <li>• arises from or is contributed to by a fault of the <i>Contractor</i>,</li> <li>• has not happened and is not expected to happen,</li> <li>• has not been notified within the timescales set out in these <i>conditions of contract</i></li> <li>• has no effect upon the cost of the <i>works</i> or Completion or</li> <li>• is not one of the compensation events stated in the contract</li> </ul> <p>the <i>Client</i> notifies the <i>Contractor</i> that the Prices and Completion Date are not to be changed.</p> <p>If the <i>Client</i> decides otherwise, it notifies the <i>Contractor</i> accordingly and includes in the notice</p> <ul style="list-style-type: none"> <li>• acceptance of the <i>Contractor's</i> quotation or</li> <li>• a statement that it does not agree with the quotation and details of the <i>Client's</i> own assessment.</li> </ul>

- 62.3 Not used.
- 62.4 If the *Contractor* does not provide a quotation which the contract requires it to submit in the time allowed, the *Client* assesses the compensation event and notifies the *Contractor* of the *Client's* assessment within one week of when it should have received the *Contractor's* quotation.
- 62.5 The *Client* includes details of its assessment of a compensation event when it notifies the *Contractor* of the assessment. If the effects of the compensation event are too uncertain to be forecast reasonably, the *Client* states assumptions about the compensation event in the assessment. Assessment of the compensation event is based on these assumptions. If any of them is later found to have been wrong, either Party may notify a correction to the other Party.

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**Assessing  
compensation  
events**

- 63**
- 63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List as calculated at the *Client's* discretion.
- 63.2 For other compensation events, the change to the Prices is assessed as the effect of the compensation event upon
- the cost of the work already done,
  - the cost of the work not yet done and
  - where applicable in accordance with clause 63.4, the resulting Fee.
- 63.3 Without prejudice to clause 63.4, the *Client* and the *Contractor* may agree rates or lump sums to assess the change to the Prices.
- 63.4 The effect of a compensation event upon cost in accordance with clause 63.2 is at the *Client's* discretion calculated
- using like for like rates including using rates agreed in respect of any other Scheme or contract,
  - using Defined Cost (subject to the addition of the Fee),
  - following open market or competitive tender, or
  - using an amount agreed by the Parties as being a reasonable amount representing payments made by the *Contractor* for the relevant item.
- 63.5 Not used.
- 63.6 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, Completion is forecast to be delayed.
- 63.7 An assessment of the effect of a compensation event made using Defined Cost
- includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events and
  - is based upon the assumptions that
    - the *Contractor* reacts competently and promptly to the event and
    - any additional Defined Cost and time due to the event are reasonably incurred.
- 63.8 If the *Client* has decided and notified the *Contractor* that the *Contractor* did not give an early warning of a compensation event which an experienced contractor would have given, the event is assessed as if the *Contractor* had given early warning.
- 63.9 Assessments for changed Prices for compensation events are in the form of changes to the Price List.
- 63.10 If
- the *Client* has accepted a *Contractor's* quotation,
  - a *Contractor's* quotation is treated as accepted or
  - the *Client* has notified the *Contractor* of a *Client's* own assessment
- for a compensation event, the assessment of that compensation event is not revised except as stated in these *conditions of contract*.

- 63.11 Without prejudice to any other of its rights or remedies, the *Client* is entitled to procure the provision of omitted work from any other person without any liability to the *Contractor* (including under the contract, under common law or otherwise) in respect of loss of anticipated profit, loss of contracts, consequential or economic losses or any other losses and expenses.

## 7. TITLE

<b>Objects and materials within the site</b>	<b>70</b>	<p>70.1 The <i>Contractor</i> has no title to an object of value or of historical or other interest within the <i>site</i>. The <i>Contractor</i> does not move such an object unless instructed to do so by the <i>Client</i>.</p> <p>70.2 The <i>Contractor</i> does not have title to materials from excavation and demolition unless the Scope states otherwise.</p>
<b>Plant and Materials</b>	<b>71</b>	<p>71.1 Each item of Plant and Materials supplied by the <i>Contractor</i> under the contract (if any) shall become the property of the <i>Client</i> upon the earlier of delivery to the <i>site</i> and when the value of the item, whether or not delivered to the <i>site</i>, has been included in a certificate of payment issued by the <i>Client</i> under the contract. Where the value of an item has not been included in a certificate of payment issued by the <i>Client</i> under the contract, the title to Plant and Materials passes back to the <i>Contractor</i> if they are removed from the <i>site</i> with the <i>Client's</i> permission.</p> <p>71.2 Delivery of any Plant and Materials shall be effected when such Plant and Materials have been safely unloaded at the <i>site</i> and, without prejudice to the <i>Client's</i> rights under clauses 41.1 and 41.2, a duly authorised representative of the <i>Client</i> has accepted the delivery. Risk of loss of or damage to the Plant and Materials is a <i>Contractor's</i> risk until the date of Completion for each Scheme or other element of work. The risk of loss or damage to surplus Plant and Materials not used in the <i>works</i> for the relevant Scheme remains with the <i>Contractor</i> until the date of Completion of the whole of the <i>works</i> in which case clause 72.14 applies.</p> <p>71.3 No payment is made to the <i>Contractor</i> on account of Plant and Materials which are outside the <i>site</i> unless stated otherwise in the Scope.</p> <p>71.4 The <i>Contractor</i> warrants that it has full clear and unencumbered title to all Plant and Materials provided under the contract (if any) and, that at the date of delivery of the same to the <i>Client</i>, it will have full and unrestricted rights to transfer title in all such items to the <i>Client</i>.</p>
<b>Free Issue Items</b>	<b>72</b>	<p>72.1 The <i>Client</i> makes available free of charge a reasonable amount of the Free Issue Items (if any) at the locations and in accordance with the details set out in the Scope.</p> <p>72.2 Where Free Issue Items are made available by the <i>Client</i> no other Plant and Materials or machinery, tools or other equipment from another source are used by the <i>Contractor</i> in place of the Free Issue Items without the prior approval of the <i>Client</i>.</p> <p>72.3 Save where stated otherwise in the Scope or where instructed otherwise by the <i>Client</i>, the <i>Contractor</i> is responsible for loading Free Issue Items.</p> <p>72.4 Delivery of Free Issue Items occurs when the relevant Free Issue Items are collected by the <i>Contractor</i> in accordance with the Scope.</p> <p>72.5 Upon completion of collection, such Free Issue Items are at the risk of the <i>Contractor</i>.</p> <p>72.6 Immediately upon collection the <i>Contractor</i> carries out a detailed inspection of such Free Issue Items and uses its reasonable endeavours to advise the <i>Client</i> within 48 hours if any such Free Issue Items are damaged or defective. Unless otherwise agreed by both Parties, the <i>Client</i> secures the repair, replacement or reissue of any such Free Issue Items as soon as reasonably practicable.</p> <p>72.7 If the <i>Contractor</i> does not so notify in accordance with clause 72.6, the <i>Contractor</i> 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.</p> <p>72.8 Subject to the <i>Contractor</i> mitigating the effect of such damage or defect referred to in clause 72.7 (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.</p>

- 72.9 If Free Issue Items are lost, damaged or destroyed whilst in the *Contractor's* possession or control, the *Contractor* at the *Client's* option either
- replaces the same or
  - restores the damaged Free Issue Items to good order and condition.
- If the *Contractor* fails to do so then the *Client* may (in addition to its other rights and remedies) repair or replace the Free Issue Items itself (or through any third party) and recover the cost of doing so from the *Contractor*.
- 72.10 The *Contractor* disposes of any packaging and waste arising in accordance with the contract.
- 72.11 The *Contractor* only uses Free Issue Items for the purposes of Providing the Works.
- 72.12 The *Client* periodically reviews the amount of Free Issue Items claimed against the *works* carried out. If an excessive amount of Free Issue Items are used by the *Contractor*, then the *Client* reserves its right to charge the *Contractor* for those items. The cost of any Free Issue Items will be determined by the Price List or in accordance with clause 52 (in each case less fair wear and tear) and is deducted from any sum due to the *Client* from the *Contractor* or recovered as a debt.
- 72.13 The *Contractor* stores the Free Issue Items in a proper manner on the *site* or such other location as the *Client* may agree in a proper manner in conditions which adequately protect and preserve them.
- 72.14 At Completion of the whole of the *works* the *Contractor* returns to the *Client* any Free Issue Items including any surplus Plant and Materials comprised in those Free Issue Items. If any Free Issue Items cannot be returned to the *Client*, the cost of the missing or damaged Free Issue Item is deducted from any sum due to the *Contractor* from the *Client* or recovered as a debt. The cost of any Free Issue Items will be determined by the Price List or in accordance with clause 52 (in each case less fair wear and tear).

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Asset Register

73.

- 73.1 The *Client* maintains an asset register identifying Free Issue Items provided to the *Contractor*.
- 73.2 The *Client* also maintains an asset register in respect of Contractor Equipment purchased by the *Contractor* for use in Providing the Works, in respect of which title vests in the *Client* following payment in respect of such items in accordance with the contract.
- 73.3 Upon take over of the whole of the *works* or earlier termination of the contract the *Client* has the option of either requiring the *Contractor* returns such items referred to in clause 73.2 to the *Client* or for such items to be retained by the *Contractor* and the market value of such items deducted from any sums due from the *Client* to the *Contractor* under the contract.
- 73.4 The *Contractor* assists the *Client* to maintain the registers referred to in this clause by keeping records and providing information reasonably requested by the *Client*.

## 8. LIABILITIES AND INSURANCE

### **Client's liabilities**

80

80.1 Save where otherwise stated in the contract, the following are *Client's* liabilities.

- Claims and proceedings from Others and compensation and costs payable to Others which are due to
  - use or occupation of the *site* by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*, or
  - negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it except the *Contractor*.
- A fault of the *Client* or any person employed by or contracted to it, except the *Contractor*.
- A fault in the design contained in
  - the Scope or
  - an instruction from the *Client* changing the Scope
 other than a design for which the *Contractor* is responsible in accordance with this contract.
- Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Client*, or by others on the *Client's* behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the *works*, Plant and Materials due to
  - war, civil war, rebellion, revolution, insurrection, military or usurped power,
  - strikes, riots and civil commotion not confined to the *Contractor's* employees or
  - radioactive contamination.
- Loss of or damage to the *works* after Completion except loss or damage occurring before the issue of the Defects Certificate which is due to
  - a Defect which existed at Completion, whether or not such Defect was apparent at Completion,
  - an event occurring before Completion which was not itself a *Client's* liability or
  - the activities of the *Contractor* on the *site* after Completion.
- Loss of or damage to the *Client's* property, other than the *works*, unless the loss or damage arises from or in connection with the *Contractor* Providing the Works.

Provided that such matters are not *Client's* liabilities to the extent caused or contributed to by any default whether by at or omission of the *Contractor* or its agents or subcontractors either under the contract or under any other contract.

80.2 The *Client* is not liable to the *Contractor* in contract, tort or otherwise for any loss of profits, production, contracts, revenue or other indirect or consequential loss suffered by the *Contractor* (save to the extent such exclusion is prohibited by law).

### **Contractor's liabilities**

81

81.1 The *Contractor* indemnifies the *Client* from and against any Losses incurred or suffered by the *Client* arising as a result of or in connection with

- Claims and proceedings from others and compensation and costs payable to others which arise from or in connection with the *Contractor* Providing the Works including
  - death or bodily injury of any person, including any member of the public or any employee or agent of the *Client*,
  - an infringement by the *Contractor* of the rights of Others, except an infringement which arose out of the use by the *Contractor* of things provided by the *Client*,

- fines or penalties imposed on the *Client* under any Statutory Requirements including NRSWA Laws and costs payable by the *Client* to its customers.
  - Loss of or damage to the *works*, Plant and Materials and Equipment,
  - Loss of or damage to property including the *Client's* property, other than the *works*, which arises from or in connection with the *Contractor* Providing the Works and
  - Death or bodily injury to the employees of the *Contractor*,
- to the extent caused by any negligence, breach of contract, breach of statutory duty, error, act, omission or default by the *Contractor* or any of its subcontractors (of any tier) or its or their employees or agents.

## Recovery of costs

82

- 82.1 Without prejudice to clause 81.1, any cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* is liable is paid by the *Contractor*.
- 82.2 Subject to the operation of clause 6 where the relevant liability is a compensation event, cost which the *Contractor* has paid or will pay as a result of an event for which the *Client* is liable is paid by the *Client*.
- 82.3 The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.

## Insurance cover

83

- 83.1 The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Client* is to provide as stated in the Insurance Table.
- 83.3 The insurances in the Insurance Table are in the joint names of the Parties except the fourth insurance stated. Save where stated in the Contract Data, the insurances provide cover for events which are the *Contractor's* liability from the *starting date* until the Defects Certificate or a termination certificate has been issued.

INSURANCE TABLE		
INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	MAINTAINED BY
Loss of or damage to the <i>works</i> , Plant and Materials as more particularly described in the Contract Data	The replacement cost as more particularly stated in the Contract Data	<i>Client</i>
Loss of or damage to Equipment	The replacement cost	<i>Contractor</i>
Loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> )	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately	<i>Client</i>
Death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with the contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event	<i>Contractor</i>

- 83.4 The *Client* may at any time decide and instruct that the manner in which any *Client* insurances stated in the Contract Data in accordance with clause 83.3 are to be arranged and maintained is to be changed. In such circumstances the *Client* issues an instruction specifying how such insurances are to be arranged and maintained.
- 83.5 The *Contractor* will keep the *Client* fully informed of any claims under the insurance policies and comply with any claims handling procedures relating to the *Client's* insurances included in the *Client's* claims handling manual, Scope or otherwise notified

by the *Client* to the *Contractor* from time to time. The *Contractor* shall co-operate with the *Client* and agrees to assist the *Client* with the preparation of any claims, and providing such information as may be required by the *Client* or by its insurer in support of a claim. It shall also comply with any relevant government or regulatory guidelines governing the determination of claims and comply with claims reporting requirements under the Civil Procedure Rules.

- 83.6 To the extent that any proceeds from *Client* insurances relate to costs or other matters that do or will (when incurred) fall to be paid to the *Contractor* in accordance with the contract, such proceeds are paid to the *Client*. The *Contractor* has no right or entitlement to such proceeds save for payment of the Prices in accordance with the contract.

## 9. TERMINATION AND RESOLVING DISPUTES

<b>Termination and reasons for termination</b>	<b>90</b>	
	90.1	A Party may terminate the <i>Contractor's</i> obligation to Provide the Works for a reason stated in these <i>conditions of contract</i> by notifying the other Party and giving details of the reason for terminating. After a notification to terminate has been issued, the <i>Contractor</i> does no further work necessary to Provide the Works.
	90.2	Either Party may terminate if the other Party has become Insolvent or its equivalent (Reason 1).
	90.3	The <i>Client</i> may terminate if the <i>Client</i> has notified the <i>Contractor</i> that the <i>Contractor</i> has not stopped one of the following defaults within two weeks of the date when the <i>Client</i> notified the <i>Contractor</i> of the default. <ul style="list-style-type: none"> <li>Substantially failed to comply with the contract (Reason 2).</li> <li>Substantially hindered the <i>Client</i> (Reason 3).</li> <li>Substantially broken a health or safety regulation under the contract or another contract between the <i>Client</i> and the <i>Contractor</i> (Reason 4).</li> <li>A Serious Incident has occurred (Reason 4A).</li> </ul>
	90.4	The <i>Contractor</i> may terminate if <ul style="list-style-type: none"> <li>the <i>Client</i> has not paid an amount due under the contract within thirteen weeks of the <i>assessment day</i> which followed receipt of the <i>Contractor's</i> application for it (Reason 5) or</li> <li>the <i>Client</i> has instructed the <i>Contractor</i> to stop or not to start any substantial work or all work for a reason which is not the <i>Contractor's</i> fault and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within eight weeks (Reason 6).</li> </ul>
	90.5	The <i>Client</i> may terminate if a Prevention Event occurs which is forecast to delay Completion by more than thirteen weeks (Reason 7).
	90.6	Not used.
	90.7	The <i>Client</i> may terminate for any other reason (Reason 8).
<b>Procedures on termination</b>	<b>91</b>	
	91.1	On termination, the <i>Client</i> may complete the <i>works</i> . The <i>Contractor</i> leaves the <i>site</i> and removes the Contractor Equipment and returns any Client Equipment and surplus Plant and Materials to the <i>Client</i> .
<b>Payment on termination</b>	<b>92</b>	
	92.1	The amount due on termination includes <ul style="list-style-type: none"> <li>an amount due assessed as for normal payments,</li> <li>the cost of Plant and Materials provided by the <i>Contractor</i> which are on the <i>site</i> or of which the <i>Contractor</i> has to accept delivery and</li> <li>50% of any amounts retained by the <i>Client</i>.</li> </ul>
	92.2	If the <i>Client</i> terminates for Reason 1, 2, 3, 4 or 4A the amount due on termination also includes a deduction of the forecast additional cost to the <i>Client</i> of completing the <i>works</i> and any other loss or damage suffered by the <i>Client</i> as a result of the termination or the event giving rise to it.
	92.3	If the <i>Contractor</i> terminates for Reason 1, 5 or 6 or if the <i>Client</i> terminates for Reason 8, the amount due on termination also includes other costs reasonably incurred by the <i>Contractor</i> in expectation of completing the whole of the <i>works</i> and to which the <i>Contractor</i> is committed.
	92.4	Within thirteen weeks of termination or, if later, of completion of the <i>works</i> by the <i>Client</i> or Others, the <i>Client</i> assesses the final amount due. The final payment is the amount due on termination less the total of previous payments. The <i>Client</i> gives the <i>Contractor</i>

details of the assessment. Payment is made within three weeks of the *Client's* assessment.

- 92.5 Notwithstanding any other provision of the contract, if the *Client* terminates because the *Contractor* is Insolvent, the *Client* need not pay any sum that has become due to the *Contractor* where such insolvency occurs after the last date on which a Pay Less Notice could be given by the *Client* in respect of that sum.
- 92.6 Following termination, any *retention* not released to the *Contractor* under clause 92.1 is retained for 2 (two) years from the date of termination. Following expiry of such 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 *Client's* receipt of such application. The *retention* is otherwise paid in accordance with the provisions of clause 51.

## Dispute resolution

93

- 93.1 A dispute arising under or in connection with the contract will (without prejudice to either Party's right at any time to refer any matter to adjudication in accordance with Applicable Law) be first referred to the *Senior Representatives* under the following procedure
- The Party referring a dispute notifies the *Senior Representatives* of the other Party of the nature of the dispute it wishes to resolve,
  - Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties,
  - The *Senior Representatives* will attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks,
  - At the end of this period the *Senior Representatives* produce a list of the issues agreed and issues not agreed. The *Client* and the *Contractor* put into effect the issues agreed,

No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent proceedings before an *Adjudicator* or *tribunal*.

- 93.2 A dispute arising under or in connection with the contract is referred to and decided by the *Adjudicator*. A Party does not refer a dispute to the *Adjudicator* that is the same, or substantially the same, as one that has already been referred to the *Adjudicator*.

## The Adjudicator

- 93.2 (1) The Parties appoint the *Adjudicator* under the NEC Dispute Resolution Service Contract current at the *starting date*. The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.
- (2) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the *Adjudicator nominating body* to choose one. The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

The *Adjudicator* and the *Adjudicator's* employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

## The adjudication

- 93.3 (1) A Party may refer a dispute to the *Adjudicator* if
- the Party notified the other Party of the dispute within four weeks of becoming aware of it and
  - between two and four further weeks have passed since the notification.

If a disputed matter is not notified and referred within the times set out in the contract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.

(2) The Party referring the dispute to the *Adjudicator* includes with its referral information to be considered by the *Adjudicator*. Any more information from a Party to be considered by the *Adjudicator* is provided within two weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(3) The *Adjudicator* may

- review and revise any action or inaction of the *Client* related to the dispute and alter a matter which has been treated as accepted or correct,

- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which is considered necessary for the *Adjudicator* to reach a decision and to do so within a stated time.

(4) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(5) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, the assessment is made in the same way as a compensation event is assessed.

(6) The *Adjudicator* decides the dispute and informs the Parties of the decision and reasons within four weeks of the referral. This period may be extended by up to two weeks with the consent of the referring Party, or by any period agreed by the Parties.

If the *Adjudicator* does not inform the Parties of the decision within the time allowed, either Party may act as if the *Adjudicator* has resigned.

(7) Unless and until the *Adjudicator* has informed the Parties of the decision, the Parties proceed as if the matter disputed was not disputed.

(8) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the contract that it intends to refer the matter to the *tribunal*.

#### The *tribunal*

93.4 A Party may refer a dispute to the *tribunal* if

- the Party is dissatisfied with the *Adjudicator's* decision or
- the *Adjudicator* did not inform the Parties of a decision within the time allowed and a new adjudicator has not been chosen,

except that neither Party may refer a dispute to the *tribunal* unless they have notified the other Party of their intention to do so not more than four weeks after

- the *Adjudicator* informs the Parties of the decision, or, if the *Adjudicator* did not inform the Parties of the decision within the time allowed,
- the end of the time allowed for the *Adjudicator's* decision.

## 10. ADDITIONAL CONDITIONS

### Third Party Agreements 100

#### 100.1 The *Contractor*

- complies with any obligations relevant to the works imposed on the *Client* by any Third Party Agreement (including obtaining required approvals or consents or executing any work),
- Provides the Works so as not to put the *Client* in breach of any Third Party Agreement.

### NRSWA Laws 101

- 101.1 For the purpose of obtaining any license under NRSWA Laws required for the works the undertaker is the *Client* who for the purposes of NRSWA Laws is the licensee.
- 101.2 All other expressions common to NRSWA Laws and to this clause have the same meaning as those assigned to them by NRSWA Laws.
- 101.3 The *Client* obtains 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 supplies the *Contractor* with copies thereof including details of any conditions or limitations imposed.
- 101.4 The *Contractor* does everything necessary to enable the *Client* 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.
- 101.5 The *Contractor* is responsible for giving to the *Client* information in due time in respect of any required notice (or advance notice where prescribed) of its proposal to commence any work.
- 101.6 Any condition or limitation in any licence obtained after the date of the 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.
- 101.7 Without prejudice to clause 41
- if the *Contractor* fails to carry out any work of repair or otherwise as required by NRSWA Laws and if in the opinion of the *Client* that work is required urgently, then the *Client* is entitled to carry out that work using its own workpeople or by other contractors and
  - the cost of rectifying Defects in works 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*.
- 101.8 Without prejudice any other right or remedy of the *Client*, the *Contractor* is liable for the contra-charges payable in respect of the NRSWA Laws stated in Schedule 5 (Contra-Charges).

### CDM Regulations 102

- 102.1 For the purposes of the CDM Regulations
- the *Contractor* is a “contractor”,
  - the Construction Manager is “principal contractor” and
  - the “principal designer” is identified in the Contract Data.
- 102.2 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.

### Performance Reviews 103

- 103.1 The *Client* and the *Contractor* undertake joint performance reviews to review the *Contractor's* performance against the following metrics
- the Key Performance Indicators and
- without prejudice to the first bullet above:
- the *Contractor's* compliance with safety-related matters which have the potential to result in fatality or injury to any person due to a failure of required controls or breach of Applicable Law or Statutory Requirements,
  - the *Contractor's* compliance with environmental matters that risk failure of required controls or breach of Statutory Requirements,
  - the Programme
  - expected customer service satisfaction scores and
  - any other performance indicators stated in the Scope.
- 103.2 The *Contractor* submits to the *Client* on an open book basis such management information and reports in the form and at the times requested by the *Client* as are reasonably necessary to demonstrate the *Contractor's* performance against such metrics.
- 103.3 The first performance review is undertaken 8 weeks after the *starting date* and subsequent performance reviews are undertaken in each subsequent month at the scheduled monthly project meeting (or as otherwise directed by the *Client* from time to time).
- 103.4 Without prejudice to clause 103.5, following each performance review, the *Client* and the *Contractor* may agree actions to be taken before the next performance review to address any identified areas of underperformance and the *Contractor* implements such measures immediately. In the event the parties are unable to agree such actions, the *Contractor* shall carry out such actions as the *Client* considers reasonably necessary for the *Contractor* to remedy any areas of underperformance.
- 103.5 Without prejudice to any other right or remedy of the *Client*, if the *Client* in its absolute discretion considers that the *Contractor* is underperforming against the metrics referred to in clause 103.1 or any actions agreed or imposed pursuant to clause 103.4, the *Client* may on giving 1 week's prior notice to the *Contractor* issue an instruction changing the Scope to remove any or all Schemes that have not physically started on the *site* as at the date of the notice (provided that work is only considered to have physically started on the *site* where pipe installation has commenced).
- 103.6 If any Scheme is omitted by the *Client* under a notice issued pursuant to clause 103.5 (irrespective of the extent or timing of such omission)
- such omission does not constitute a basis to allege that the *Client* has repudiated the contract,
  - such omission is not a compensation event,
  - such omission does not entitle the *Contractor* to payment of any loss (including, without limitation, loss of profit) and damage,
  - the *Client* may in its absolute discretion allocate any omitted Scheme to a third party contractor to carry out and complete the works relating to the Scheme,
  - the total of the Prices is reduced by the amount calculated in accordance with the Price List relating to the omitted Scheme and
  - the *Client* revises the Completion Date to reflect the omission of the Scheme, having regard to the reduced scope of the *works* and the Programme current as at the date of the notice.

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**Trespass and Nuisance** **104**

- 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 *Client* 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 *Client* in defending any relevant action or proceedings which may be instituted.
- 104.3 Without prejudice to any other provision in the contract the *Contractor* advises the *Client* 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 *Client* to the satisfaction of the *Client*.
- 104.4 The *Client* 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.
- 104.5 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 *Client* 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.

## Audit

### 105

- 105.1 The *Contractor* will, for the duration of the contract and for a period of six years thereafter, permit the *Client* or the representatives of any regulatory authority, 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 the contract and that the *Contractor* is complying with all other obligations contained in the contract
  - audit the procedures on quality systems of the *Contractor* (certified to BS EN ISO 9001 or equivalent approved)
  - verify compliance with any health, safety and environmental procedures
  - audit any systems used by the *Contractor* to Provide the Works (including real time access to any such systems)
  - assess and verify the *Contractor's* compliance with all Applicable Law or
  - enable the *Client* 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 *Client's* customers.
- 105.2 The *Client* 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 the contract.

## Confidentiality

### 106

- 106.1 The *Contractor* undertakes that it shall keep confidential and shall not, at any time during the term of the contract and for a period of five years after termination of

the 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 *Client* except as permitted by 106.2.

- 106.2 The *Contractor* may disclose the *Client'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 the contract
  - with the written agreement of the other Party or as may be required by law, a court of competent jurisdiction, Ofgem or any governmental or regulatory authority or
  - where the information is in the public domain (otherwise than by failure of the *Contractor* to comply with its obligations under this contract).
- 106.3 The *Contractor* shall ensure that its employees, officers, representatives or advisers to whom it discloses the *Client's* confidential information comply with this clause 106.
- 106.4 The *Contractor* shall not use the *Client's* confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the contract.
- 106.5 The *Contractor* obtains written approval from the *Client* before:
- using photographs of any *site* for its own or external publication;
  - erecting any sign on any *site* (except for site management, safety, customer information and road traffic information signage);
  - making publicity releases or announcements relating to the contract or the *Contractor's* delivery of the *works*; or
  - using vehicles with the *Contractor's* livery whilst carrying out the *works* other than where permitted in accordance with the Scope.
- 106.6 The *Contractor* ensures that it does not, through its action or inaction harm the *Client's* reputation.

## Data Protection

### 107

- 107.1 The *Contractor* shall comply with all Data Protection Laws.
- 107.2 The *Contractor* shall comply with the *Client's* data protection policies, procedures and Codes of Conduct for Contractors (available on the *Client's* website) including any updates as may be available from time to time ("**DP Relevant Policies**").
- 107.3 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 Data Protection Laws and the DP Relevant Policies and will enforce them where appropriate.
- 107.4 The *Contractor* shall provide such supporting evidence of compliance with clauses 107.1, 107.2 and 107.3 as the *Client* may reasonably request and without undue delay, shall notify the *Client* of any breach of this clause 107.
- 107.5 Without prejudice to any other rights or remedies of the *Client*, a breach by the *Contractor* of this clause 107 is a substantial failure to comply with the contract which entitles the *Client* to terminate the contract for breach by the *Contractor*.
- 107.6 The Data Protection Addendum contained in Schedule 4 (Data Protection Addendum) shall apply.
- 107.7 The *Contractor* indemnifies the *Client* from and against any Losses incurred or suffered by the *Client* arising as a result of or in connection with any claim made or brought by any individual in respect of any loss, damage or distress caused to that individual as a result of the *Contractor's* unauthorised processing, unlawful processing, destruction of or damage to any Personal Data processed by the *Contractor*, its employees or agents who Provide the Works.

## Intellectual Property

### 108

- 108.1 All Intellectual Property Rights in all drawings, designs, patterns, specifications, samples, materials, tools and other data or intellectual property provided by the

*Client* or prepared by the *Contractor* at the request of the *Client* in connection with the contract ("**Proprietary Materials**"), shall be

- the property of and vest in the *Client* 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 the contract and
- sent, if requested, to the *Client* carriage paid on Completion.

108.2 All Intellectual Property Rights in:

- drawings, designs, patterns, specifications, samples materials, tools and other data or intellectual property which is in the possession of the *Contractor* at the date of this contract or otherwise created by or on behalf of the *Contractor* after the date of this contract independently from and outside the scope of this contract and
- inventions, designs, drawings, tests, reports and procedures, models, knowledge, manuals, formulae, tables of operating conditions and the like and all other knowledge and other know how relating to such inventions and the like whether or not it has been protected by registration or otherwise,

(together "**Contractor Intellectual Property**") remains vested in the *Contractor*. The *Contractor* grants to the *Client*, with immediate effect, an irrevocable, royalty-free, non-exclusive licence (to remain in full force and effect notwithstanding discharge, termination or disputes of or under this contract) to use the Contractor Intellectual Property and to copy the Contractor Intellectual Property for any purpose relating to this contract including the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment, extension and repair of the *works*. The licence shall carry the right to grant sub-licences and shall be transferable to third parties to use and reproduce the Contractor Intellectual Property in connection with such purposes.

108.3 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 *Client*.

108.4 The *Contractor* indemnifies the *Client* from and against any Losses incurred or suffered by the *Client* arising as a result of or in connection with any third party claim relating to a breach of Intellectual Property Rights prepared by the *Contractor* which are used in the Provision of the Works or receipt or use by the *Client* of the *works*.

108.5 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.

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**TUPE**

**109**

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

- the *Contractor*, subject to compliance with Applicable Law, provides to the *Client* within such timescales as the *Client* stipulates (acting reasonably) any employee related information in respect of employees assigned to the Provision of the Works which the *Client* may reasonably require from time to time
- 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* does 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 *Client*
- the *Contractor* keeps the *Client* 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 its employment has or should have transferred to the *Client* (or such replacement supplier) on any date following the date of the contract and
- in the event TUPE applies both Parties will comply with their obligations thereunder.

<b>Background Checks</b>	<b>110</b>	
	110.1	To the extent permitted by Applicable Law, and as required by the <i>Client</i> , the <i>Contractor</i> will vet each member of its personnel involved in Providing the Works (whether employed or otherwise) in accordance with the <i>Client's</i> vetting and background checking requirements notified to the <i>Contractor</i> from time to time.
<b>Environment</b>	<b>111</b>	
	111.1	The <i>Contractor</i> hereby warrants and undertakes that with respect to the carrying out of the <i>works</i> and the construction and operation of the plant forming part of the <i>works</i> and the remedying of Defects therein, there shall be no breach of Environmental Law.
	111.2	The <i>Contractor</i> 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 <i>site</i> ) 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.
	111.3	In the event of any breach by the <i>Contractor</i> of this clause 111, the <i>Contractor</i> shall forthwith at its own expense, alter, repair or replace any affected <i>works</i> or part thereof, or otherwise remedy the breach.
<b>Environmental Information Regulations</b>	<b>112</b>	
	112.1	The <i>Contractor</i> accepts that the <i>Client</i> may be obliged to disclose Information pursuant to the EIR (whether or not the Information is confidential or commercially sensitive) without consulting or obtaining consent from the <i>Contractor</i> .
	112.2	The <i>Contractor</i> will (at its own expense) and will procure that any sub-contractors or third parties will (at their own expense) provide the <i>Client</i> with details about and copies of all Information that the <i>Client</i> requests within five working days of a request from the <i>Client</i> and otherwise use reasonable endeavours to assist and co-operate with the <i>Client</i> to enable the <i>Client</i> to comply with its obligations under the EIR.
	112.3	The <i>Contractor</i> 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 <i>Client</i> within three working days of receipt.
<b>Real Living Wage</b>	<b>113</b>	
	113.1	The <i>Contractor</i> <ul style="list-style-type: none"> <li>ensures that none of its workers or its subcontractors' workers engaged in the performance of the contract and who would also satisfy the eligibility criteria set by the Living Wage Foundation (or any replacement) is paid an hourly wage (or equivalent of an hourly wage) less than the Real Living Wage and</li> <li>co-operates and provides all reasonable assistance to the <i>Client</i> in monitoring the effect of the Real Living Wage,</li> </ul>
<b>Conflicts of interest</b>	<b>114</b>	
	114.1	The <i>Contractor</i> <ul style="list-style-type: none"> <li>checks for any Conflict of Interest at regular intervals and in any event not less than once in every six months,</li> <li>notifies the <i>Client</i> in writing immediately upon becoming aware of any Conflict of Interest and</li> <li>will work with the <i>Client</i> to do whatever is necessary to manage the Conflict of Interest to the <i>Client's</i> satisfaction.</li> </ul>
	114.2	Without prejudice to clause 114.1, if a Conflict of Interest arises the <i>Contractor</i> agrees to set up and maintain Information Barriers. The <i>Contractor</i> provides at any time on request by the <i>Client</i> written details and confirmation that any Information Barriers have been set up and maintained.
	114.3	Without prejudice to any other rights or remedies of the <i>Client</i> , a breach by the <i>Contractor</i> of this clause 114 is a substantial failure to comply with the contract which entitles the <i>Client</i> to terminate the contract for breach by the <i>Contractor</i>

<b>Assignment</b>	<b>115</b>	
	115.1	The <i>Client</i> may at any time without the consent of the <i>Contractor</i> assign all or any of its rights and benefits under the contract to any person.
	115.2	The <i>Contractor</i> if required by the <i>Client</i> enters into a novation agreement on mutually agreed terms with any group company of the <i>Client</i> or company acquiring the <i>Client's</i> business.
	115.3	The <i>Contractor</i> may not assign, sub-contract or otherwise transfer the whole or any part of the benefit of or any of its rights or obligations under the contract without the <i>Client's</i> prior written consent, such consent not to be unreasonably withheld or delayed.
	115.4	Any restriction on assignment in this clause 115 does not apply to the extent that it would have no effect under the Business Contract Terms (Assignment of Receivables) Regulations 2018.
<b>Contracts (Rights of Third Parties) Act 1999</b>	<b>116</b>	
	116.1	Subject to the third bullet point of clause 109.1, the Parties to the 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 the contract
<b>IR35</b>	<b>117</b>	
	117.1	The <i>Contractor</i> complies with Schedule 7 (IR35).
<b>Emergency support</b>	<b>118</b>	
	118.1	<p>Where stated to apply in the Scope, in the event of the occurrence of exceptionally adverse weather or other events and incidents which place exceptional demands on the <i>Client's</i> labour resources, which include (but are not limited to):</p> <ul style="list-style-type: none"> <li>• Service relays;</li> <li>• Service transfers;</li> <li>• Water ingress;</li> <li>• Purge and relights;</li> <li>• Reinstatement; and</li> <li>• Supervision,</li> </ul> <p>then if the <i>Client</i> so requests the <i>Contractor</i> provides on short notice the provision of support from the <i>Contractor</i> which may include those resources with GNO1 mate or engineering response driver or GN02 service or main layer qualifications, meter workers, reinstatement support (including any support requiring valid vehicle licences) and site managers and any other requested qualifications or resources in accordance with the Scope. Any such instruction is treated as a compensation event.</p>

IF THE UNITED KINGDOM HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 AS AMENDED BY THE LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009 (THE ACT) APPLIES TO THE CONTRACT, THE FOLLOWING ADDITIONAL CONDITIONS APPLY.

<b>Definitions</b>	Y1.1	(1) In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.  (2) Each <i>assessment day</i> is a payment due date. If there is a termination, the payment due date is thirteen weeks after the notice of termination.  (3) The final date for payment is the later of fourteen days after the payment due date and seven days after receipt by the <i>Client</i> of an invoice issued in accordance with these <i>conditions of contract</i> .
	Y1.2	The <i>Client's</i> certificate is the notice of payment specifying the amount due at the payment due date (the notified sum, which may be zero) and stating the basis on which the amount was calculated.
	Y1.3	Not used.
<b>Assessing the amount due</b>	Y1.4	If a Party intends to pay less than the notified sum, it notifies the other Party of its assessment of the amount due not later than seven days (the prescribed period) before the final date for payment. The notification states the basis on which the amount due is calculated and includes details of the calculation. A Party pays the notified sum unless it has notified its intention to pay less than the notified sum.
	Y1.5	If the <i>Contractor</i> exercises its right under the Act to suspend performance, it is a compensation event.
<b>The adjudication</b>	Y1.6	The following replaces clause 93.3(1).  A Party may issue to the other Party a notice of its intention to refer a dispute to adjudication at any time. The Party refers the dispute to the <i>Adjudicator</i> within seven days of the notice.
	Y1.7	The <i>Adjudicator</i> may in the decision allocate the <i>Adjudicator's</i> fees and expenses between the Parties.
	Y1.8	The <i>Adjudicator</i> may, within five days of giving the decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
	Y1.9	If the <i>Adjudicator's</i> decision changes an amount notified as due, payment of the sum decided by the <i>Adjudicator</i> is due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.

**SCHEDULE 1**

**Price List**

[REDACTED]

## **SCHEDULE 2**

### **Scope**

[REDACTED]

## SCHEDULE 3

### Payment Process

#### 1. Background

- 1.1 Invoicing and payment in respect of *works* provided under this contract shall be undertaken under the terms of the process as further detailed below.
- 1.2 The *Client* may amend or replace such process from time to time and such amended or replacement process shall thereafter be incorporated into this contract, save that the period within which payment shall be made by the *Client* to the *Contractor* as stated in this contract shall not be increased under any such amended or replacement process.

#### 2. Billing Process

- 2.1 The billing process is set out in Annex 1 and the timeline is set out in Annex 2 to this Schedule.
- 2.2 Subject to clause 5 of the *conditions of contract* payment will be weekly based on weekly track sheets which the *Contractor* will provide to the *Client* pursuant to Annex 1 and Annex 2. Weekly track sheets will be in the form and contain the information specified by the *Client* from time to time.
- 2.3 The *Contractor* must be registered on the Ariba Network to receive purchase orders (where applicable) and to submit invoices in accordance with clause 51.B1. Further details can be found on: <https://cadentgas.com/suppliers>.
- 2.4 Weekly payments are interim and subject to reconciliation following Completion of each Scheme and upon Completion of the whole of the *works*.

#### 3. Invoice

- 3.1 The invoice must contain all the relevant details included on an invoice including:
  - 3.1.1 registration number from or confirmation that invoices have been submitted through the Ariba Network;
  - 3.1.2 contractor name and address;
  - 3.1.3 date of issue;
  - 3.1.4 price;
  - 3.1.5 a description of goods/services supplied;
  - 3.1.6 VAT registration number;
  - 3.1.7 the amount of VAT charged;
  - 3.1.8 indicates whether or not the reverse charge applies to the supply; and
  - 3.1.9 the gross amount payable.



## Annex 2<sup>8</sup> to Schedule 3 (Billing Timeline)

LDP Contractor Payment Profile																																						
		Week 1							Week 2							Week 3							Week 4							Week 5								
		M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S	M	T	W	Th	F	S	S		
Week 1	Activity	Weekly Work Commenced				Weekly Tracksheets (T/S) Measured CMO Site Manager.	n/a		Weekly T/S Agreed	Weekly Payment value Goods Received ENSURE GOODS RECEIPTING SPLIT Receipt 1 for payable value Receipt 2 for retention value	Vendor to submit invoice via Ariba. The invoice must match the format of the purchase order	Invoice matched and retention allocated	n/a			Weekly BACS payment processed by Cabent			Weekly certified values received by Contractors	Payment received by Contractors via BACS.	n/a							n/a								n/a		
Week 2	Activity						n/a		Weekly Work Commenced				Weekly Tracksheets (T/S) Measured CMO Site Manager.	n/a		Weekly T/S Agreed	Weekly Payment value Goods Received ENSURE GOODS RECEIPTING SPLIT Receipt 1 for payable value Receipt 2 for retention value	Vendor to submit invoice via Ariba. The invoice must match the format of the purchase order	Invoice matched and retention allocated			n/a		Weekly BACS payment processed by Cabent		Weekly certified values received by Contractors	Payment received by Contractors via BACS.	n/a									n/a	
Week 3	Activity						n/a							n/a		Weekly Work Commenced				Weekly Tracksheets (T/S) Measured CMO Site Manager.			n/a		Weekly T/S Agreed	Weekly Payment value Goods Received ENSURE GOODS RECEIPTING SPLIT Receipt 1 for payable value Receipt 2 for retention value	Vendor to submit invoice via Ariba. The invoice must match the format of the purchase order	Invoice matched and retention allocated			Weekly BACS payment processed by Cabent		Weekly certified values received by Contractors	Payment received by Contractors via BACS.	n/a			

<sup>8</sup> Annex 2 has been provided for the purposes of tender and may be supplemented by inserting specific dates.

## SCHEDULE 4

### Data Protection 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 all laws and rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body and any legally binding industry code of conduct, code of practice or guideline, in each case relating to data protection, the processing of personal data and privacy and in force from time to time, including in particular the Data Protection Act 2018 and any replacement to it;
- (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 *Client* 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 *Client* 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 and equivalent provisions of any Data Protection Laws.

#### 3. Data Processing Terms

3.1 In the course of providing the Services to the *Client* 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 Where the *Contractor* Processes Personal Data for the *Client* as a Data Processor, it shall:

- 3.2.1 Process the Personal Data solely on the documented instructions of the *Client*, 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 *Client* 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 and equivalent Data Protection Laws 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 *Client*;
- 3.2.6 not permit any third party to Process the Personal Data without the prior written consent of the *Client*, such consent to be subject to the *Contractor* meeting the conditions set out in Article 28 (2) and (4) of the GDPR and equivalent Data Protection Laws;
- 3.2.7 notify the *Client* 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 *Client* immediately upon becoming aware of or reasonably suspecting any Personal Data Breach, such notice to include all information reasonably required by the *Client* to comply with its obligations under the Data Protection Laws;
- 3.2.9 upon requests, provide the *Client* with reasonable assistance in carrying out data protection impact assessments;
- 3.2.10 permit the *Client*, 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 *Client* in relation (i) any communication received under section 3.2.7, as well as any similar communication received by the *Client* directly; and (ii) any Personal Data Breach, including by taking any appropriate technical and organisational measures reasonably requested by the *Client*; and
- 3.2.12 cease Processing the Personal Data immediately upon the termination or expiry of the contract and at the *Client*'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 and 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 *Client*'s current and former directors, employees, contractors, sub-contractors, professional advisers, workers, and all other individuals employed or engaged by any of the *Client*'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 *Client*.

## SCHEDULE 5

### Contra-Charges

Description	Contra Charge	Guidance Notes
3 <sup>rd</sup> Party damage – (Agreed settlement method – Contractor direct settlement)	CG plus 25% or max £1000	<i>Where the Contractor has agreed to handle and settle their own claims. However, if NOT settled by the Contractor and ultimately settled by the Client all direct costs with an uplift will be recharged to the Contractor.</i>
3 <sup>rd</sup> Party damage – (Agreed settlement method – Client Claims Department)	Actual cost plus 15%	<i>Where the Contractor has agreed for the Client to handle and settle their claims. All direct costs with an uplift will be recharged to the Contractor.</i>
NRSA Section 74 / Defect charges / Permit charges / Lane rental	Actual cost plus 10%	
Defect Inspection and defect identification costs	Actual cost plus 10%	
NRSA Fixed Penalty Charges	CG actual cost plus 10%	
GSOP1 Failure to restore supplies after unplanned interruption	CG actual cost plus 10%	<i>Details in the Guaranteed Standards of Performance which are included in the Scope</i>
GSOP2 Failure to Reinstate Customers premises within 5 working days of engineering works being completed	CG actual cost plus 10%	<i>Details in the Guaranteed Standards of Performance which are included in the Scope</i>
GSOP3 Failure to provide alternate heating and cooking facilities to a priority domestic customer	Actual cost plus 10%	
Goodwill payments	CG actual cost plus 10%	<i>Discretionary payments to customers for disruptions and inconveniences outside the standard GSOP entitlements</i>
Pipe and Fittings	Actual Costs plus 0%	
Plant and Vehicles supplied to Contractor	CG agreed rate plus 5%	<i>CG would want reduction in rates</i>

Description	Contra Charge	Guidance Notes
Plant deliver/ transport costs	Agreed rate plus 0%	<i>CG would want reduction in rates</i>
Plant, vehicle and welfare damages	Actual cost plus 10%	<i>Based on actual invoiced cost</i>
Plant write offs	Actual cost plus 10%	<i>Based on actual invoiced cost</i>
Signs, barrier loss and damages	Actual cost plus 0%	
Welfare Units	Agreed rate plus 0%	
Fuel supplies	Actual cost plus 0%	<i>Shell reports to be utilised</i>
Tools supplied	Actual cost plus 5%	
PPE	Actual cost plus 0%	
Background checks	£65/person	CG new entrants
Training	Agreed rate plus 0%	
Training – Failure to attend agreed course (Late cancellation or failure to attend)	Agreed rate plus 0%	<i>At agreed daily rate, if cancellation less than 48 hours before course, or fails to attend the planned course.</i>
Vac Exc hire	Agreed rate plus 0%	<i>At agreed rates (weekly charge)</i>
Vac Exc damages	Actual Cost plus 10%	
Camera Services	Agreed rate plus 0%	

Description	Contra Charge	Guidance Notes
Fail drug and alcohol screening	£85/test	
Cadent Flex – Operational Team	Agreed rate plus 0%	<i>At agreed rates (weekly charge)</i>
Data rectification including time incurred by the Client in correcting errors or delays in providing data which is required to be submitted by the Contractor in accordance with the contract	Actual cost plus 5%	

## SCHEDULE 6

### Key Performance Indicators

	KPI	Description	Target
<b>Customer</b>	Customer Satisfaction (C-Sat)	As measured using the Ofgem methodology	To be agreed annually / per package of works
<b>Safety</b>	Cable Strikes	Based on electricity strikes (HV & LV) during the period. Includes street lighting cables, excludes consequential damage to the wider network (no double counting).  The measure will be to achieve the given ratio of cable strikes per km abandoned.	To be agreed annually / per package of works
<b>Safety</b>	Lost Time Injury Frequency	IFR is based on the number of injuries resulting in lost time (LTI) compared to an average of per million hours worked. The measure will be to achieve the target IFR rate.	To be agreed annually / per package of works
<b>Safety</b>	Public Injuries (Major)	An injury to a Member of the Public resulting from our activities, where treatment is given by a medical practitioner and/or HSE RIDDOR Specified Injury is confirmed	To be agreed annually / per package of works
<b>Delivery</b>	Programme Adherence	Measures the % of actual start dates within the month that start on, before or after the planned start date from the first 90-day notice (with on time allowing for 5-day window unless the job has a permit)	To be agreed per package of works

## SCHEDULE 7

### IR35

#### 1. Definitions

1.1 In this Schedule 7, the following words and expressions have the following meanings

<b>"Cadent Company"</b>	is any company within the Cadent Group of Companies.
<b>"Cadent Group of Companies"</b>	is all subsidiary and holding companies of the Client and all subsidiary and holding companies of such companies, as subsidiary and holding company are defined in section 1159 of the Companies Act 2006, as amended.
<b>"Costs"</b>	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement.
<b>"Deemed Employee"</b>	a person who the Client has determined is providing services to the Client in circumstances which fall within section 61M(1)(d) of the ITEPA.
<b>"Disagreement Process"</b>	the status disagreement process operated or to be operated by the Client or another Cadent Company in accordance with IR35 for representations to be made to the Client or the relevant Cadent Company concerning the determination of a worker's employment status for tax purposes.
<b>"Employment Taxes"</b>	income tax, national insurance contributions and any other liability, deduction, levy including any Apprenticeship Levy, arising from or made in connection with the performance of the Works.
<b>"HMRC"</b>	HM Revenue & Customs.
<b>"Information"</b>	means any information, documentation and/or evidence required to be provided and/or submitted by the Contractor to the Client or another Cadent Company in accordance with this Schedule 7.
<b>"Intermediary"</b>	a third party which meets one of Conditions A to C set out in sections 61N(9) to (11) of the ITEPA.
<b>"IR35"</b>	the legislation relating to workers' services provided through intermediaries set out Chapters 8 and 10 of Part 2 of the ITEPA and the Social Security Contributions (Intermediaries) Regulations 2000 (SI 2000/727) (as may be amended from time to time) any other legislation or secondary legislation which imposes a liability to pay or deals with the payment to HMRC of any income tax, national insurance contributions and/or Apprenticeship Levy (and any fines, penalties and interest in relation to the same) in connection with services provided by workers who provide their services via Intermediaries.
<b>"IR35 Data"</b>	the meaning set out in paragraph 9.1.

<b>"ITEPA"</b>	Income Tax (Earnings and Pensions) Act 2003 (as may be amended from time to time).
<b>"Labour Supply Chain"</b>	the Contractor's supply chain as it relates to the provision of labour or personnel to assist in the provision of the Works and includes subcontractors at any level or tier of that supply chain, whether or not there is a formal contract in place in respect of such assistance.
<b>"Recoverable Liabilities"</b>	all Losses, liabilities, Costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all Losses, liabilities, Costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding.
<b>"Status Determination"</b>	a determination in accordance with IR35 as to whether or not a worker is a Deemed Employee.
<b>"Status Determination Statement"</b>	a status determination statement provided by the Client (or which the Client may be obliged to provide) pursuant to IR35.
<b>"Supervisory Authority"</b>	means any governmental or regulatory authority responsible for enforcing the Data Protection Laws and any replacement or successor body or person for any such authority from time to time.
<b>"Tax Authority"</b>	HMRC and any court, tribunal or other competent tax authority.
<b>"Works"</b>	the works or services and any element of them which are to be provided by the Contractor under this contract.

## 2. Representations and Warranties

- 2.1 The Contractor represents and warrants to the Client and each Cadent Company that:
- 2.1.1 it is UK tax resident or has a place of business in the UK;
  - 2.1.2 no individuals who are or will be involved in the provision of the Works will be engaged via an Intermediary; and
  - 2.1.3 it shall ensure that Employment Taxes are applied and accounted for in full, and all Employment Tax Laws are complied with, in respect of each and every individual who is involved in the provision of the Works.
- 2.2 The representations and warranties set out in paragraph 2 are made on the date of this contract.

## 3. Compliance with IR35

- 3.1 The Contractor will comply in all respects with its obligations under IR35 and will procure that all members of the Labour Supply Chain similarly comply, including promptly deducting and making payment of all applicable taxes, contributions and levies in relation to any worker.
- 3.2 The parties do not intend, given the nature of the Works, that IR35 will be applicable in connection with the Works. However, if the Client and/or another Cadent Company is or is

alleged by HMRC or otherwise to be liable to withhold and account for any Employment Taxes, the Contractor will take or procure the taking of all necessary action to ensure that the Client and/or Cadent Company (as relevant) ceases to be responsible for such liabilities as soon as practicable.

- 3.3 As soon as the Client or another Cadent Company provides a Status Determination Statement to the Contractor, the Contractor will immediately provide it to the member of the Labour Supply Chain who is directly below it in the Labour Supply Chain and will procure an equivalent obligation from that member.

#### 4. **Information and assistance**

- 4.1 The Contractor will promptly:

- 4.1.1 inform the Client if any representation and warranty in paragraph 2 is or becomes incorrect in any respect upon the Contractor becoming aware of the same;
- 4.1.2 provide all information and assistance to the Client and other Cadent Companies to assist the Client and Cadent Companies in complying with any obligations it may have under IR35 or dealing with any claim, assessment or enquiry raised by any Tax Authority in relation to the provision of the Works; and
- 4.1.3 notify the Client if any information that it has provided to the Client pursuant to this Schedule 7 is or becomes incorrect in any material respect or if it becomes aware that the member of the Labour Supply Chain responsible for withholding and paying Employment Taxes in connection with the provision of the Works is not withholding and paying such liabilities.

- 4.2 The Contractor will promptly provide such evidence, information and clarification as the Client may request to confirm the Contractor's compliance with this Schedule 7 including evidence of compliance of members of the Labour Supply Chain.

- 4.3 The Contractor represents and warrants on the date that it submits any Information that:

- 4.3.1 the contents of such Information are true, accurate and complete; and
- 4.3.2 it has taken all proper and necessary steps to verify such Information where such Information originates from a third party including any Intermediary or another member of the Labour Supply Chain.

#### 5. **Other rights relating to the application of IR35**

- 5.1 In addition to, and without limiting its other rights or remedies, if the Client or another Cadent Company is or becomes responsible for withholding and accounting for any Employment Taxes in connection with the provision of the Works:

- 5.1.1 the Client may terminate this contract in whole or in part with immediate effect by giving written notice to the Contractor in accordance with clause 90.1 of the Conditions of Contract for Reason 2; and/or
- 5.1.2 the Client and the other Cadent Companies will have the right to recover from the Contractor to the maximum extent permitted by law by way of deduction from the amount of any fees or charges payable by the Client or the Cadent Company (as relevant) to the Contractor (and whether by set-off or otherwise) any amounts (including penalties and interest) which the Client other Cadent Company (as relevant) is required to pay under IR35.

#### 6. **Costs of compliance with IR35**

The Contractor will not include in any charges or fees payable under this contract any cost or expenses whatsoever relating (whether directly or indirectly) to IR35 compliance.

The Client may deduct from any charges or fees payable under this contract any amount it determines to be its or another Cadent Company's costs in complying with IR35.

## 7. **Indemnity**

7.1 The Contractor will indemnify the Client and each Cadent Company from and against any Recoverable Liabilities (including for the avoidance of doubt any liability to pay any Employment Taxes and any penalty, fine or interest incurred or payable by the Client and each Cadent Company in connection with or in consequence of any liability, deduction, contribution, assessment or claim for any individual or by a Tax Authority in respect of the application of IR35 where recovery is not prohibited by law) arising out of or in connection with:

- 7.1.1 any breach of (including any breach of any warranty or representation) or failure of the Contractor to comply with any provision of this Schedule 7;
- 7.1.2 the Client and/or a Cadent Company (as relevant) being responsible for deducting and accounting for any Employment Taxes as a result of any action, omission or default of the Contractor or any member of the Labour Supply Chain;
- 7.1.3 any claim brought against the Client or against another Cadent Company by any worker not confirmed in writing by the Client as being previously employed by the Client or the relevant Cadent Company where such claim is based on or connected with any worker or employment (including deemed employment for IR35 purposes ) status as a result of assistance or involvement in the provision of the Works;
- 7.1.4 any Disagreement Process by reason of the Client or against another Cadent Company or the Contractor's or any member of the Supply Chain's non-compliance with IR35; and/or
- 7.1.5 the Client's and/or another Cadent Company's Status Determination is incorrect or ceases to be correct due to the Contractor, another member of the Labour Supply Chain or any other person providing wrong, inaccurate or misleading information to the Client and/or another Cadent Company or to the Contractor or any other person failing to notify the Client and/or another Cadent Company of any changes in the information it has supplied to the Client and/or Cadent Company.

## 8. **Confidentiality**

Nothing in this contract will prevent the disclosure of any information, documentation, other evidence or a Status Determination Statement to the extent required by and in accordance with clause 106 of the Conditions of Contract.

## 9. **Data protection**

9.1 Without prejudice to clause 107 of the Conditions of Contract and Schedule 4, the Client and the Contractor will each be a separate Controller in respect of Personal Data it Processes in relation to compliance with its obligations under IR35 in connection with this contract ("**IR35 Data**").

9.2 The Contractor will:

- 9.2.1 Process the IR35 Data in accordance with Data Protection Laws;
- 9.2.2 only Process IR35 Data it receives in connection with this contract for the purposes of facilitating compliance with IR35 including providing a Status Determination Statement to member(s) of the Labour Supply Chain in accordance with paragraph 3.3 and providing information and assistance to the Client and other Cadent Companies in accordance with paragraph 4;

- 9.2.3 not by any act or omission cause the Client or another Cadent Company to be in breach of the Data Protection Laws;
- 9.2.4 notify the Client promptly and in writing should the Contractor become aware of any inaccuracy in IR35 Data in its possession or control;
- 9.2.5 notify the Client promptly after becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, IR35 Data received in connection with this contract;
- 9.2.6 promptly notify the Client of any request that it receives for exercise of a Data Subject's rights under the Data Protection Laws or communication that it receives from a Data Subject, Supervisory Authority or other third party relating to IR35 Data received in connection with this contract;
- 9.2.7 provide reasonable assistance to the Client and other Cadent Companies in responding to any request or communication from a Data Subject, Supervisory Authority or other third party relating to IR35 Data; and
- 9.2.8 provide all information and assistance to the Client and other Cadent Companies to assist the Client and other Cadent Companies in complying with any obligations it or they may have under Data Protection Laws in respect of IR35 Data.

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**Dated:** 2019

(1) Cadent Gas Limited

(2) [ ]

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**Direct Service Provider Contract**

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relating to Mains Replacement Works in the North West of England

Contract Number: [ ]

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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 ( $\leq 8''$  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* [ ] hours for emergency defects

*period* is [ ] 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 <i>Employer</i> , the <i>Contractor</i> and the <i>Contractor's</i> 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 *Contractor* 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**

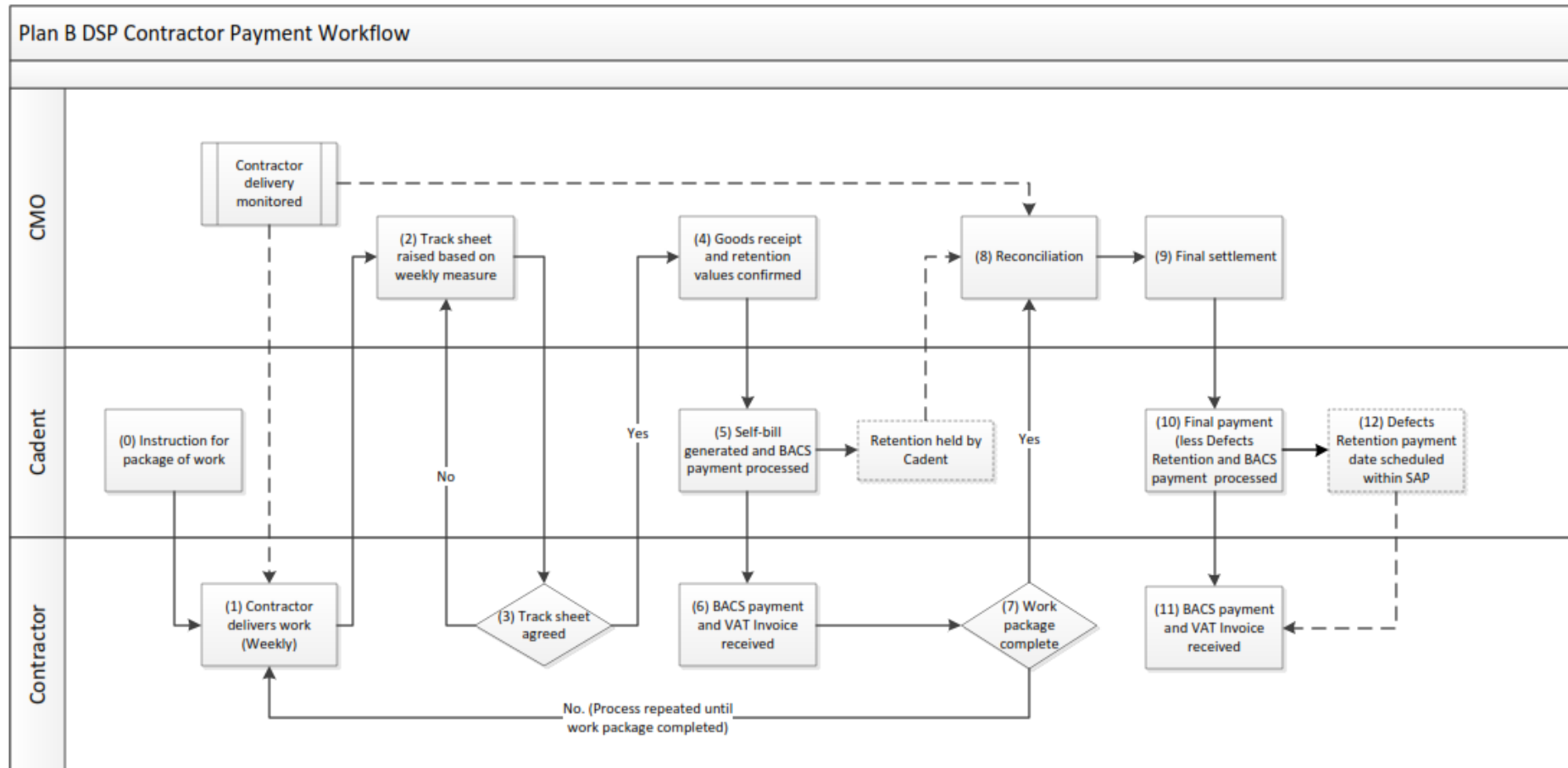
- 1.1 Invoicing and payment in respect of *works* provided under this Agreement shall be undertaken under the terms of a self-bill process agreement as further detailed below.
- 1.2 The Employer may amend or replace such self bill process from time to time and such amended or replacement process shall 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

Customer 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.