
Dated:

(1) Cadent Gas Limited

(2) [REDACTED]

Local Delivery Partner Contract

relating to mains replacement and other asset management activities in [REDACTED]

Contract Number: [REDACTED]

Key

Items to be completed prior to entering into the contract are highlighted green

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THE CONTRACT is made the day of

BETWEEN

- (1) CADENT GAS LIMITED a company registered in England under Company Number 10080864 whose registered office is situated at Cadent, Pilot Way Ansty Park Coventry CV7 9JU (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 other asset management activities comprising in **[REGION TBC]** in order to achieve mains replacement and asset management 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 work packages in accordance with the terms and conditions referred to in the contract.

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

1. DEFINITIONS

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

2. CONTRACT

2.1 The following documents are deemed to form and be read and construed as part of the contract, namely:

2.1.1 the Contract Data attached to the contract;

2.1.2 the "**Conditions of Contract**" being the NEC Engineering and Construction Short Contract Fourth Edition June 2017 (with amendments January 2019, October 2020 and January 2023) subject to the amendments attached to the contract; and

2.1.3 the Schedules to the contract.

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

2.3 The *Client* covenants to pay to the *Contractor* for 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.

2.4 The limitation period within which any claim may be brought by the *Client* for breach of the contract by the *Contractor* is 12 years from the date of the breach. The *Contractor* agrees not to raise in defence of any such claim a shorter limitation period, whether under the Limitation Act 1980 (as amended or re-enacted from time to time) or otherwise.

3. COUNTERPARTS

The contract may be executed in two counterparts, each of which when executed together constitutes a duplicate original, but all the counterparts together constitute the one agreement.

4. ELECTRONIC SIGNATURE

4.1 Each Party agrees that:

4.1.1 for the purposes of the execution of the contract an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) is 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 the contract;

4.1.2 the contract may be electronically dated and completed; and

further to completion of the contract each Party accepts an electronic copy of the executed and completed contract 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:

EXECUTED by
CADENT GAS LIMITED

)
)
)

Signature

Print name

EXECUTED by
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

Cadent Gas Limited, Pilot Way Ansty Park Coventry CV7 9JU

Address for
electronic
communications

[REDACTED]

The Construction
Manager is

Name

[REDACTED]

Address for
communications

[REDACTED]

Address for
electronic
communications

[REDACTED]

The Principal
Contractor is

Contractor, unless otherwise stated in the Works Allocation Package or Scheme Instruction issued in accordance with Schedule 8 (Works Allocation Procedure)

The Principal
Designer is

~~*Client/Construction Manager* – delete as applicable~~

Address for
communications

[REDACTED]

Address for
electronic
communications

[REDACTED]

The *works* are

Described in the Scope attached at Schedule 2 of the contract (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 and/or Scheme Instruction, being the location *where* the works are carried out, including the volumes above and below that location and any property of the *Client* or others which is affected by the *works* or used by the *Contractor* in Providing the Works.

Contract Data

The *Client's* Contract Data

The *starting date* is

a date for a particular Scheme under a Scheme Instruction in accordance with Schedule 8

The
commencement date is

1 April 2027

The *completion date* is

Completion Dates for individual Schemes are stated in the Scheme Instruction issued under Schedule 8 (Works Allocation Procedure), or, where none is stated, are determined in accordance with clause 30.1. The duration for a Scheme is the period from the date on which the *Contractor* commences that Scheme on the *site* to the Completion Date.

The *term* is

four years from the *commencement date* (the "Initial Term"). The Initial Term may be extended in accordance with clause 33.2.

The *delay damages* are

N/A

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* is 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

- in respect of any *works* other than those referred to in the first main bullet above, the *defects date* is 104 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)

Contract Data

The *Client's* Contract Data

The *retention* is

5%

The *Client*

may / may not accept a retention bond in lieu of retention under clause 50.8. *(delete as applicable)*

The *interest rate* on late payment is

4

% per annum above the base rate of Barclays Bank Plc

The proportions used to calculate the Price Adjustment Factor are

0.

40

linked to the BCIS index for

Plant and Road Vehicles

0.

35

linked to the BCIS index for

Labour

0.

15

linked to the ONS index for

Manufacturing

0.

10

linked to the ONS index for

Construction

The Indices are:

BCIS Labour and Supervision Index (Series 90/1)
BCIS Plant and Road Vehicles Index (Series 90/2)
ONS Producer Price Index: Inputs into production of Manufactured products, excluding Climate Change Levy (CDID: GHIP)
ONS Construction Output Price Index
Construction (Series 10700)

The place where weather is to be recorded is

█

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

Contract Data

The *Client's* Contract Data

- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 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

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 amount of cover or minimum limit of indemnity	Deductibl es	Cover provided until	Further requiremen ts
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 <i>works</i> , excluding contractor's plant and equipment	Full reinstatement based on estimated contract value.	£10k	The final Defects Certificate in respect of the last Scheme under the contract has been issued	The policy names <i>the Client</i> , the <i>Contractor</i> and the <i>Contractor's</i> consultants and subcontractors of any tier as co-insured. To include Terrorism.
Where the Scope for a Scheme states that the	£10M each and every claim and in	£10k	6 years following Completi on of the relevant	The policy names <i>the Client</i> , the <i>Contractor</i> and their

Contract Data

The *Client's* Contract Data

	<i>Contractor</i> and/or <i>Client</i> provides design services in respect of that Scheme, indemnity for any sum or sums which the <i>Contractor</i> and/or <i>Client</i> may become legally liable to pay arising from any claim or claims made against them during the period of insurance as a direct result of any negligent act, negligent error or negligent omission in the professional conduct by or on behalf of the <i>Contractor</i> and/or <i>Client</i> of the design activities and duties in respect of that Scheme.	the annual aggregate		Scheme or (if earlier) termination of the contract.	consultants and the <i>Client's</i> and <i>Contractor's</i> subcontractors of any tier as co-insured. First party costs and expenses
	All sums which the Insured becomes legally liable to pay arising directly or indirectly in connection with the works in respect of - death, bodily injury, disease suffered by any person - loss of or damage to	£50M each and every occurrence and in the annual aggregate for sudden and accidental pollution	£10K	The final Defects Certificate in respect of the last Scheme under the contract has been issued	The policy names the <i>Client</i>, the <i>Contractor</i> and their consultants and the <i>Client's</i> and <i>Contractor's</i> subcontractors of any tier as co-insured. Multiple Insured – cross liabilities clause

Contract Data

The *Client's* Contract Data

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.				

The *Contractor*
provides this
insurance

Insurance against	Minimum amount of cover or minimum limit of indemnity	Deductibles	Cover provided until	Further requirements
EMPLOYERS' LIABILITY Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with the contract	Such amount as required by the relevant law	N/a	The final Defects Certificate in respect of the last Scheme under the contract has been issued	Insurers to have minimum security rating of A- as assessed by Standard & Poor's (or an equivalent rating by AM Best) The <i>Contractor</i> ensures that the policy is endorsed with a waiver by Insurers of any rights of recourse, including subrogation rights, against the <i>Client</i> .
MOTOR THIRD PARTY LIABILITY All sums which the <i>Contractor</i> becomes legally liable to pay in respect of death, bodily	Such amount as required by the relevant law	N/A	The final Defects Certificate in respect of the last Scheme under the contract has been issued	Insurers to have minimum security rating of A- as assessed by Standard & Poor's (or an equivalent rating by AM Best)

Contract Data

The *Client's* Contract Data

injury, disease suffered by any person and/or loss of or damage to property arising from the use of motor vehicles.				
CONSTRUCTION PLANT AND EQUIPMENT Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents in them) for use or incorporation in the <i>works</i> .			The final Defects Certificate in respect of the last Scheme under the contract has been issued	Insurers to have minimum security rating of A- as assessed by Standard & Poor's (or an equivalent rating by AM Best)
CYBER LIABILITY — Loss, damage, costs, expenses and liabilities arising from or in connection with any cyber security incident, data breach, network intrusion, malware or ransomware attack, or the Contractor's failure to comply with the Information Security Requirements under clause 107A			The final Defects Certificate in respect of the last Scheme under the contract has been issued	Insurers to have minimum security rating of A- as assessed by Standard & Poor's (or an equivalent rating by AM Best)

Is the *Contractor's* obligation for design to use the skill and care normally used by professionals designing works similar to the *works* **Yes**

The *Client's* Senior Representative is

Client:

Contract Data

The *Client's* Contract Data

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, October 2020 and January 2023) and the following additional conditions

The amendments and additional conditions attached to the contract

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



Contract Data

The Contractor's Contract Data

The *fee percentage* is in respect of the cost of people %

in respect of payments to subcontractors %

in respect of other costs %

The *fee percentage* represents profit only. Overhead is stated separately in the Price List as an Overhead Element in accordance with clause 63.5.

The Contractor's Senior Representative is

Key personnel are

Key roles are

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 the contract.

Scope

The Scope is in Schedule 2 attached to the contract.

Site Information

The Site Information is in the Scheme Instructions

Conditions of Contract

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

1. GENERAL

Actions

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

Identified and defined terms

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- 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) "Actual Duration" means the period from the date on which the *Contractor* commences the relevant Scheme on the *site* to the date of the Completion Certificate for of that Scheme.

(A2) Adjustment Date is 31 March 2028 and each anniversary of that date during the term of the contract.

(A3) 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.

(A4) 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.

(A5) Base Date Index (B) is defined in clause 119.2.

(A6) BCIS Index and BCIS Indices are the relevant series of indices published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (or any successor) identified in the Contract Data, or, if any such index ceases to be published, any replacement index reasonably determined by the *Client* to be its equivalent.

(A7) 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.

(A8) *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*.

(A9) CPIH is the Consumer Prices Index including owner occupiers' housing costs published by the Office for National Statistics (or any successor), or, if CPIH ceases to be published, any replacement index reasonably determined by the *Client* to be its equivalent.

(1) Completion, in relation to each Scheme, is when the *Contractor* has done all the work which the Scope states it is to do in respect of that Scheme (including supplying all the documents and information which the Scope states it is to supply in respect of that Scheme and satisfying any other pre-conditions to Completion stated in the Scope) except for correcting *notified* Defects which *do* not prevent the *Client* from using the works comprised in that Scheme or Others from doing their work.

(1A) A Completion Certificate is a certificate issued by the *Client* certifying Completion of a Scheme or other element of work. A separate Completion Certificate is issued in respect of each Scheme or other element of work.

(2) The Completion Date is the completion date for a Scheme or other element of work stated in the Scope, a Works Allocation Package or a Scheme Instruction, unless later changed in accordance with the contract.

(2A) Change of Control occurs in respect of the *Contractor* where: (a) Control of the *Contractor* is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not, at the date of the contract, hold Control of the *Contractor*; or (b) a person who has Control of the *Contractor* at any time during the *term* ceases to have Control of the *Contractor*.

(2B) 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*.

(2C) Contract Year means each successive period of twelve months during the *term* commencing on the *commencement date* or an anniversary of it.

(2D) 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*.

(2E) 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.

(2F) Control means, in relation to a person, the power (whether direct or indirect) to direct or cause the direction of that person's affairs, whether by means of holding shares, possessing voting power, exercising contractual powers, or otherwise, and "Controlled" is construed accordingly.

(3) 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 are 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) A Defects Certificate is either a list of Defects that the *Client* has notified before the *defects date* for the relevant Scheme which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none. A separate Defects Certificate is issued in respect of each Scheme or other element of work.

(5A) Delivery Plan has the meaning given in paragraph 3 of Schedule 8 (Works Allocation Procedure).

(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 by the *Contractor*) 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 (which is provided for within the Prices) and profit (which is 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, or
 - give an early warning which the contract required it to give,

Disallowed Cost also includes the cost of

- fines or other penalties incurred by the *Contractor* (including in accordance with 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, and
- any amount not recovered from an insurer (including any deductibles or excess) which is borne by the *Contractor*.

(6B) Draft Works Package is the document issued by the *Client* to the *Contractor* for each Contract Year in accordance with paragraph 3 of Schedule 8 (Works Allocation Procedure).

(6C) 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.

(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, licence, 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.

(7C) Excludable Supplier means a supplier that is an excludable supplier for the purposes of the Procurement Act.

(7D) Excluded Supplier means a supplier that is an excluded supplier for the purposes of the Procurement Act.

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

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

(8A) 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.

(8B) High Potential Near Miss is an incident arising from the *Contractor's* performance of the *works* where, but for the actual outcome, the incident could reasonably (in the opinion of the *Client*) have resulted in

- death or serious injury to any person,
- a dangerous occurrence reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013,

- an unplanned interruption to gas supply affecting 50 or more premises,
- an explosion, fire, gas escape or other event requiring emergency services attendance,
- a breach of health and safety Statutory Requirements, or
- serious damage to critical infrastructure, including gas mains, electricity cables, telecommunications cables, water mains or sewers.

(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) Interim Works Package has the meaning given in paragraph 7.1 of Schedule 8 (Works Allocation Procedure).

(8H) 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*.

(8I) Key Role is a role stated in the Contract Data as a *key role*.

(8J) Key Personnel are the individuals stated in the Contract Data as *key personnel*, or any replacement approved by the *Client* under clause 122

(8K) Latest Index (L) is identified in clause 119.3

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

(8M) 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.

(8N) Material Performance Failure occurs if at any time an event occurs which gives the *Client* an entitlement to terminate the contract for any of the reasons in clause 90.3, 90.8 and 90.9-90.11, whether or not a notice to terminate is in fact issued.

(8O) Minimum Volume Commitment is the minimum volume of work that the *Client* commits to instruct to the *Contractor*, as determined in accordance with Schedule 8.

(8P) 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.

(8Q) 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.

(8R) ONS Construction Materials Index is the Construction Output Price Index: All Construction (new work and repair and maintenance) (Series 10700) published by the Office for National Statistics (with a base of 2015 = 100), or such successor index as may be agreed between the Parties or, failing agreement, determined by the *Client* acting reasonably.

(8S) ONS PPI Index is the Producer Price Index: Inputs into production of Manufactured products, excluding Climate Change Levy (CDID: GHIP) (with a base of 2015 = 100) published by the Office for National Statistics, or such successor index as may be agreed between the Parties or, failing agreement, determined by the *Client* acting reasonably.

(8T) 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*.

(8U) Pandemic means any epidemic, pandemic or similar widespread outbreak of communicable disease declared or recognised as such by a national government, the World Health Organization or other competent public health authority.

(8V) Pandemic Event is a new event after the date of the contract which

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

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

(10) Performance Improvement Plan is a plan prepared by the *Contractor* at the *Client's* direction in accordance with paragraph 3 of Schedule 6 (Key Performance Indicators) or paragraph 10.3 of Schedule 8 (Works Allocation Procedure) to address areas of underperformance.

(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,
 - 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 *commencement 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*.

(11B) Price Adjustment Factor (PAF) is calculated in accordance with clause 119.4.

(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) Procurement Act is the Procurement Act 2023 and any secondary legislation, statutory guidance or Procurement Policy Notes made or issued under it, in each case as amended, re-enacted or replaced from time to time.

(13B) 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) Quarterly Delivery Milestone is a quarterly target for pipe to be abandoned by diameter profile as set out in the Works Allocation Package in accordance with paragraph 8 of Schedule 8 (Works Allocation Procedure).

(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) RIIO3 is the regulatory framework under which the *Client* operates set by Ofgem for the period from 1 April 2026 to 31 March 2031 (or such other period determined by Ofgem as applying for RIIO3).

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

(14D) Scheme Value means, in relation to a Scheme, the fixed price for that Scheme, being the aggregate of the Prices for the Price List items (calculated by applying the rates in the Price List to the quantities, durations and service counts stated in the Scope or the relevant Works Allocation Package / Scheme Instruction) as applicable to that Scheme.

(14E) Scheme Access Date, in relation to a Scheme or other element of work, is the date notified by the *Client* or stated in the relevant Works Allocation Package / Scheme Instruction as the date from which the *Contractor* may access the *site* to commence that Scheme or element of work.

(14F) Scheme Instruction is as defined in paragraph 6 of Schedule 8 (Works Allocation Procedure).

(14G) Scope Variation Order is a written agreement between the Parties, in the form appended to the contract or as otherwise agreed, which adds, removes or modifies these *conditions of contract*, Scope items, amends the Price List, and/or varies the Schedules, and which takes effect in accordance with clause 12.3A.

(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.

(15B) Service Manager Instruction (or SMI) is an instruction issued by the *Client* (acting through the Construction Manager) directing the *Contractor* to take specified remedial steps under Schedule 8 (Works Allocation Procedure)

(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) Target Abandonment Length has the meaning given in paragraph 1.2 of Schedule 8 (Works Allocation Procedure).

(19) 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*.

(20) Works Allocation has the meaning given in Schedule 8 (Works Allocation Procedure).

(21) Works Allocation Package is as defined in Schedule 8 (Works Allocation Procedure).

(22) Works Lite is the mobile/field system application made available to the *Contractor* by the *Client* (or the *Client's* licensor) for the purposes of receiving, recording and reporting on Scheme Instructions, job status and related data in connection with the *works*, as further described in the Scope

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.
- 12.3A Without prejudice to clause 12.3 and the *Client’s* right to give instructions changing the Scope under clause 14.2, the Parties may agree to vary the contract by entering into a Scope Variation Order. A Scope Variation Order, once signed by both Parties, has effect as a variation to the contract and, to the extent stated in the Scope Variation Order
- amends Schedule 1 (Price List),
 - amends Schedule 2 (Scope),
 - amends Schedule 6 (Key Performance Indicators),
 - amends Schedule 8 (Works Allocation Procedure), and
 - amends any other Schedule or provision of the contract,
- in each case from the date stated in the Scope Variation Order. In the event of conflict between a Scope Variation Order and the conditions of contract, the Scope Variation Order prevails to the extent of such conflict.
- 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 are 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* relies 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. Where the *Client* proposes to add a new category of work to the Scope (being work of a type not described in Schedule 2 as at the date of the contract), such addition is made by way of a Scope Variation Order in accordance with clause 12.3A, and is not a compensation event under clause 60.1(1) unless and to the extent stated in the Scope Variation Order.
- 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 withhold 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 <i>Contractor</i> and the <i>Client</i> 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 <i>works</i> in use • change the Programme • affect the work of the <i>Client</i>, the Construction Manager or Others • adversely affect the <i>Contractor's</i> ability to safely carry out the <i>works</i> • result in a breach of any Applicable Law or • result in the <i>Client</i> incurring any fines, penalties or statutory charges (including under NRSWA Laws). The <i>Client</i> or the <i>Contractor</i> may give an early warning by notifying the other of any other matter which could increase the <i>Contractor's</i> total cost. Early warning of a matter for which a compensation event has previously been notified is not required.
	15.2	The <i>Contractor</i> and the <i>Client</i> 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.
Access to the site and provision of services	16	
	16.1	The <i>Client</i> allows access to and use of the <i>site</i> to the <i>Contractor</i> 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 <i>Contractor</i> complying with the contract, and is subject to the <i>Contractor</i> complying with all security requirements, policies and procedures communicated to it by the <i>Client</i>.
	16.1A	The <i>Client</i> does not guarantee uninterrupted or exclusive access to or use of the <i>site</i>. The <i>Contractor</i> co-operates with Others in obtaining and providing information which they need in connection with the <i>works</i>. The <i>Contractor</i> co-operates with Others and shares the <i>site</i> with them as stated in the Scope. The <i>Contractor</i> provides every reasonable facility for such persons to execute their work, provided that the <i>Contractor</i> is not obliged to provide any attendances or temporary services to any such persons.
	16.2	The <i>Client</i> provides services and other things as stated in the Scope.
Corrupt Acts and Anti-Slavery	17	
	17.1	The <i>Contractor</i> 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 <i>Contractor</i> complies with the <i>Client's</i> anti-bribery and anti-corruption policies, and Anti-slavery policy contained in the Supplier Code of Conduct (which is available to view on the <i>Client's</i> 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 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 the 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 NRSWA 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 does 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.

21.2D If the *Contractor* subcontracts any of its obligations, the *Contractor* warrants that it has agreed appropriate provisions in the relevant subcontract to enable the *Contractor* to comply with its obligations under the contract.

The *Contractor* ensures that any subcontract includes payment terms no less favourable than those set out in the contract.

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

The *Contractor* notifies the *Client* 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.

- 21.2E The criteria required for subcontractor selection include a requirement that the *Contractor*
- confirms its adherence to the general competence requirements and expectations set out in the Scope;
 - undertakes its own due diligence checks prior to proposing the subcontracting of any element of the works. Such due diligence checks include, but are not limited to, the following
 - disclosure of any ongoing prosecutions or legal actions against the proposed subcontractor;
 - obtaining and validating employment references from the previous 12 months in respect of the proposed subcontractor; and
 - satisfying itself, and disclosing to the *Client* by means of verified references, whether any proposed subcontractor personnel present risks associated with previous employment compliance or health and safety concerns.
- 21.3 The *Client*, 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 the 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 the contract in accordance with Good Industry Practice.

Access for the *Client*

22

- 22.1 The *Contractor* provides access for the *Client* and others named by the *Client* to work being done for the contract and to stored Plant and Materials.

3. TIME

Starting and Completion

30

- 30.1 The *Contractor* does not start work until the *starting date* in respect of the relevant Scheme and does not start work on the relevant part of the *site* required for any Scheme or other element of work until the Scheme Access Date for that Scheme or element of work. *Client*
- Where a Completion Date is fixed for a *Scheme* or other element of work, the *Contractor* completes that Scheme or element of work on or before the Completion Date.
- Where no Completion Date is fixed but a period for completion is stated in the contract, the *Contractor* completes that Scheme or element of work within that period.
- 30.2 In respect of each Scheme or other element of work, the *Contractor* submits a forecast of the date of Completion for that Scheme or element of work to the *Client* each week from the access date for that Scheme or element of work until Completion and notifies the *Client* when in its opinion Completion of that Scheme or element of work has been achieved.
- 30.3 Subject to any procedure concerning determination and certification of Completion of different categories of *works* stated in the Scope, the *Client* decides the date of Completion and certifies it to the *Contractor* within a reasonable time after it considers that Completion has been achieved.
- 30.4 The *Client* may instruct the *Contractor* to stop or not to start any work and later instructs *Client* the *Contractor* to either
- restart or start the work, or

- remove the work from the Scope.

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

The programme 31

31.1 The *Client* provides Programmes to the *Contractor* as stated in the Scope.

31.2 The *Client* provides revised Programmes to the *Contractor* at intervals that the *Client* considers appropriate or when otherwise stated in the contract. Programmes align with the *Contractor's* push plans and contract awarded durations subject to agreement with the *Client* and the Construction Manager.

Acceleration 32

32.1 The *Client* 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 *Client* 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 *Contractor* to an extension of time the rate of progress of the *works* is in the opinion of the *Client* too slow to ensure Completion by the Completion Date the *Client* notifies the *Contractor* in writing. The *Contractor* 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.

Term 33

33.1 The contract commences on the *commencement date* and, unless terminated earlier under clause 90, continues for the *term*.

33.2 The Parties may, by mutual written agreement, extend the *term* beyond the Initial Term in accordance with one of the following

(a) a first extension of two years (the "First Extension Period"), followed (if the Parties so agree) by a second extension of three years (the "Second Extension Period"), or

(b) a single extension of five years (the "Single Extension Period"),

(each of the First Extension Period, Second Extension Period and Single Extension Period being an "Extension Period"). The maximum total *term* under the contract (including the Initial Term and any Extension Period(s)) does not exceed nine years.

33.3 Not less than twelve months before the expiry of the Initial Term or any Extension Period (as applicable), either Party may give written notice to the other requesting discussions regarding a potential extension of the term. Following receipt of such notice, the Parties meet (or communicate by such other means as they may agree) to discuss in good faith whether to extend the term. If the Parties do not reach written agreement on an extension before the expiry of the *term*, the contract expires at the end of that term unless the Parties subsequently agree otherwise in writing.

If a Scheme instructed before expiry of the *term* does not achieve Completion until after the date of expiry of the *term*, the provisions of the contract continue to apply to that Scheme until its *defects date*, but no further Schemes are instructed after expiry of the *term*.

33.4 Scope for each Contract Year is developed, and Schemes are instructed, in accordance with Schedule 8 (Works Allocation Procedure).

Works Allocation Package and Scope Adjustment 34

34.1 Before the start of each Contract Year during the *term* (other than Contract Year 1, which is governed by paragraph 2 of Schedule 8), the *Client* issues to the *Contractor* a Works

Allocation Package in accordance with Schedule 8 (Works Allocation Procedure) identifying the Schemes and volumes of work to be instructed for that Contract Year.

- 34.2 Subject to paragraph 9 of Schedule 8 (Works Allocation Adjustments), the *Client* and the *Contractor* may agree in writing to add a Scheme to, or remove a Scheme from, a Works Allocation Package during the relevant Contract Year. An agreed addition or removal takes effect on the date stated in the written agreement and, from that date, is treated as forming part of, or as removed from, the Scope as applicable.
- 34.3 If the *Client* and the *Contractor* cannot agree an addition or removal proposed under clause 34.2, either Party may refer the matter to the Senior Representatives under the procedure in clause 93.1.
- 34.4 This clause 34 does not limit the *Client's* rights under clause 103A.
- 34.5 Where New Scope Items are added by a Scope Variation Order, the *Client* includes such New Scope Items in the Works Allocation Package for the relevant Contract Year (or, where the Scope Variation Order takes effect part-way through a Contract Year, by way of a supplementary Works Allocation Package or Scheme Instructions issued in accordance with Schedule 8). For the avoidance of doubt, paragraph 9 of Schedule 8 (Works Allocation Adjustments) applies to New Scope Items in the same way as it applies to existing Scope items.

4. QUALITY MANAGEMENT

Tests and inspections	40
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.
Searching for and notifying Defects	41
41.1	Until the <i>defects date</i> for the relevant Scheme or other element of work, the <i>Client</i> may instruct the <i>Contractor</i> to search for a Defect in that Scheme or element of work.
41.2	The <i>Client</i> may notify a Defect to the <i>Contractor</i> at any time before the <i>defects date</i> for the relevant Scheme or other element of work.
Correcting Defects	42
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 • within the time-scale specified by the <i>Client</i> or • if no time-scale is specified, within a time which minimises the adverse effect on the <i>Client</i> and Others and • in any event before the end of the <i>defect correction period</i>. 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.
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	In respect of each Scheme or other element of work, the <i>Client</i> issues a Defects Certificate at the <i>defects date</i> for that Scheme or element of work if <i>there are no</i> notified Defects for that Scheme or element of work, or otherwise at the earlier of • the end of the last <i>defect correction period</i> and • the date when all notified Defects have been corrected.
Accepting Defects	43
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.
Uncorrected Defects	44
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 to the <i>Client</i> .

5. PAYMENT

Assessing the amount due

50

- 50.A1 The provisions of this Section 5 are subject to the provisions of clause Y(UK)1 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
- subject to clause 50.8, the month after the *Client* issues the final Defects Certificate in respect of the last Scheme or other element of work under the contract to achieve that status 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 In respect of each Scheme or other element of work with a specified Completion Date, the *Contractor* pays delay damages for each day from the Completion Date for that Scheme until the earlier of
- Completion of that Scheme and
 - the date either Party gives notice to the other to terminate the *Contractor's* obligation to Provide the Works.
- 50.7 Subject to clause 50.8, the *retention* is deducted from each assessment of the amount due and held by the *Client*. The *retention* is subject to a retention cap equal to 5% of the aggregate value of all Schemes instructed in the preceding 12 months (or, if the contract has been in force for less than 12 months, 5% of the aggregate value of all Schemes instructed since the commencement date). Once the aggregate *retention* held reaches the retention cap, no further deductions are made. The *Client* releases the *retention* to

the *Contractor* within 30 days after the later of (a) the expiry of the *term* and (b) the expiry of the last *defect correction period* under the contract.

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*.

50.8 If stated in the Contract Data, the *Client* may notify the *Contractor* that the *Client* will accept a retention bond in lieu of retention under clause 50.7 in respect of one or more Schemes (or all Schemes under the contract). The *Contractor* provides the retention bond at its own cost within 20 working days of the *Client's* notification.

(1) The retention bond is provided by a bank or insurer which the *Client* has accepted, for an amount not less than the retention cap stated in clause 50.7, and in the form set out in [Schedule [*] (Form of Retention Bond)] [the Scope]. The retention bond remains in force until the date on which *retention* would otherwise be released under clause 50.7. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond.

(2) Any amount retained by the *Client* after the *Contractor* gives the *Client* a compliant retention bond is paid to the *Contractor* in the next assessment. No further amount is retained under clause 50.7 for so long as a valid retention bond remains in force.

(3) If the *Contractor* fails to provide or maintain a valid retention bond following a notification under clause 50.8, the *Client* resumes withholding retention under clause 50.7 as if no retention bond had been provided.

50.9 Where a Scheme is valued by reference to time-based rates in the Price List, the amount due for that Scheme is calculated by multiplying the applicable rate by the Actual Duration for that Scheme.

The Actual Duration used for calculating the amount due does not exceed the period from commencement of the relevant Scheme on the *site* to the Completion Date for that Scheme (as may be extended in accordance with the contract).

Payment

51

- 51.A1 The *Client* certifies a payment on or before the date on which a payment becomes due. The *Client's* certificate includes details of how the amount due has been assessed.
- 51.B1 Within the time period stated in Schedule 3 (Payment Process) the *Contractor* 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 *Client* from time to time) in the amount of the *Client's* 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 *Contractor* to the *Client* if the amount due is less than the amount due in the previous assessment. Other payments are made by the *Client* to the *Contractor*.
- 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.
- 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 *Client* pays to the *Contractor* the amount of any VAT properly chargeable in respect of such supply.
- 51.4 Subject to clause Y1.4, the *Client* may deduct from any sum due to the *Contractor*
 - any sum due to the *Client* from the *Contractor* and

- any amount which the *Contractor* is liable to pay to the *Client* (whether liquidated or otherwise) arising under the contract and any other contract entered into by the *Client* and the *Contractor*.

51.5 Without prejudice to clause 51.4 and any other right or remedy of the *Client*, the *Contractor* is liable for the recharges payable stated in Schedule 5 (Recharges).

Items not on the Price List	52	
	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 • 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 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 <i>Contractor</i> for the relevant item.
	52.3	The <i>Contractor</i> keeps the following records • accounts of payments of cost referred to in clause 52.2, • where applicable, proof that the payments have been made • where applicable, communications about and assessments of compensation events for subcontractors and • other records required by the Scope.
	52.4	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 keeps in accordance with clause 105.
	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.
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 <i>Contractor</i> acknowledges that the obligation of the <i>Client</i> 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 <i>Contractor</i> is to submit to the <i>Client</i> evidence proving that the <i>Contractor</i> 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 <i>Client</i> .
	53.3	If the <i>Contractor</i> does not provide such evidence or during the currency of the contract the <i>Contractor</i> ceases to possess a CIS Registration or the <i>Contractor</i> breaches any of the requirements of the Construction Industry Scheme, this constitutes 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> .

6. COMPENSATION EVENTS

Compensation events

60

60.1 Subject to clauses 60.3 and 60.4, 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,
- are not shown or reasonably indicated by (i) the Site Information, (ii) information obtainable from a visual inspection of the site, (iii) publicly available utility records (including records held by statutory undertakers), (iv) the results of CAT and Genny scans, GPR surveys or other non-intrusive detection methods required by the Scope or Good Industry Practice, (v) information which the *Contractor* is required to obtain during pre-construction work under the Scope or Schedule 8 (Works Allocation Procedure), or (vi) any other information provided by the *Client* before the date of the contract or the relevant Scheme Instruction, and
- could not reasonably have been identified by the *Contractor* through the clash detection, utility searches and site surveys required by the Scope.

Only the difference between the physical conditions encountered and those which would have been identified using the information sources and methods listed above 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 relevant Scheme,
- at the place stated in the Contract Data (or, where the Scheme Instruction identifies a different weather station for that Scheme, at that place), and
- during a period when the *Contractor* is actively carrying out work on that Scheme,

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.
- (11A) A Pandemic Event.
- (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 provided by the *Client* in the Works Allocation Package issued under Schedule 8 (Works Allocation Procedure), including the Draft Works Package, design drawings, pre-construction survey information templates and any Scheme-specific information,
 - information obtainable from a visual inspection of the site,
 - information which the *Contractor* is required to obtain or which the *Contractor* has obtained during pre-construction work undertaken in accordance with the Scope or Schedule 8 (Works Allocation Procedure), including the results of any clash detection, utility searches, CAT and Genny scans, GPR surveys or other site investigation,
 - publicly available utility records (including records held by statutory undertakers) and other publicly available information which is relevant to the physical conditions at the site.

- 60.3 A compensation event does not arise, or the Prices and Completion Date are not changed, to the extent that the event arises from or is contributed to by a circumstance which the *Contractor* identified, or could with reasonable diligence have identified, more than eight weeks before the starting date for the relevant Scheme. Such circumstances include
- clashes or conflicts with works being carried out by other contractors, Statutory Undertakers or other third parties,
 - engineering requirements affecting the duration or method of carrying out the works (including deep excavations, pressure regime requirements, or the need for specialist Plant or Equipment),
 - restrictions on working hours imposed by a local authority, highway authority or other relevant authority,
 - requirements for full road closures, traffic management measures, temporary traffic signals or other traffic management arrangements, and
 - any other matter identifiable through the Works Allocation Package, the noticing process, pre-construction work under Schedule 8, coordination with affected third parties, or publicly available records.

- 60.4 For the purposes of clause 60.3, the *Contractor* is deemed to have identified a circumstance if it was included in *Client*-provided information (including the Works Allocation Package, Scheme Instruction or Delivery Plan), was identifiable through pre-construction work under Schedule 8, or was identifiable through the coordination required by clause 15.2. A compensation event also does not arise to the extent that the *Contractor* failed to mitigate the effect of the circumstance after becoming aware of it.

Notifying compensation events

61

- 61.1 The *Client* and the *Contractor* notify the other of an event which has happened or which they expect to happen as a compensation event.

- 61.2 If the *Client* notifies the compensation event, it also instructs the *Contractor* to submit a quotation for the compensation event. The *Contractor* submits the quotation within one week of being instructed to do so by the *Client*. If the *Contractor* notifies the compensation event, it submits a quotation with the notification.
- 61.3 If the *Contractor* 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 *Client* or the *Client* giving an instruction or changing an earlier decision.
- 61.3A If the *Client* decides that the *Contractor* did not give an early warning of the event which the *Contractor* could have given, the *Client* notifies that decision to the *Contractor* when instructing the *Contractor* to submit a quotation.
- 61.4 A compensation event is not notified by the *Client* or *Contractor* after the issue of the Defects Certificate.

Quotations for compensation events

62

- 62.1 A quotation for a compensation event comprises proposed changes to the Prices and Completion Date assessed by the *Contractor*. The *Contractor* submits details of its assessment with each quotation. If the effects of a compensation event are too uncertain to be forecast reasonably, the *Contractor* 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.
- 62.2 The *Client* replies within two weeks of the *Contractor's* submission. If and to the extent that the *Client* decides that an event notified by the *Contractor*
- arises from or is contributed to by a fault of the *Contractor*,
 - has not happened and is not expected to happen,
 - has not been notified within the timescales set out in these *conditions of contract*
 - has no effect upon the cost of the *works* or Completion or
 - is not one of the compensation events stated in the contract
- the *Client* notifies the *Contractor* that the Prices and Completion Date are not to be changed.
- If the *Client* decides otherwise, it notifies the *Contractor* accordingly and includes in the notice
- acceptance of the *Contractor's* quotation or
 - a statement that it does not agree with the quotation and details of the *Client's* own assessment.
- 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.

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 calculated using the rates in the Price List as the primary method of assessment. Where no applicable rate exists in the Price List, the *Client* may at its discretion assess the effect
- 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 The Prices in the Price List include a separate element for the *Contractor's* overhead (the "Overhead Element"). No additional overhead is payable on any compensation event assessment (whether assessed using rates in the Price List, Defined Cost, or any other method under clause 63). For the avoidance of doubt, where a compensation event is assessed by reference to Defined Cost, the Fee applied to that Defined Cost represents profit only and does not include any element for overhead.
- 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

Objects and materials within the site	70	
	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> .
	70.2	The <i>Contractor</i> does not have title to materials from excavation and demolition unless the Scope states otherwise.
Plant and Materials	71	
	71.1	Each item of Plant and Materials supplied by the <i>Contractor</i> under the contract (if any) becomes 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.
	71.2	Delivery of any Plant and Materials is effected when such Plant and Materials have been safely unloaded at the <i>site</i> and <i>Client</i> 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 last Scheme or other element of work under the contract to achieve that status.
	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.
	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 has full and unrestricted rights to transfer title in all such items to the <i>Client</i> .
Free Issue	72	
	72.1	The <i>Client</i> may by written notice introduce a free issue arrangement under which the <i>Client</i> or its nominee procures pipe and fittings for the <i>Contractor's</i> use in Providing the Works.
	72.2	A notice under clause 72.1 states (a) the categories of pipe and fittings covered, (b) the implementation date, and (c) the proposed ordering and delivery process.
	72.3	The parties meet within 4 weeks of the notice to discuss implementation. If terms are not agreed within 8 weeks, the <i>Client</i> determines them (acting reasonably).
	72.4	The <i>Contractor</i> provides information reasonably requested by the <i>Client</i> to facilitate introduction of a free issue arrangement.
	72.5	The introduction of a free issue arrangement is not a compensation event. The Price List is adjusted to reflect any reduction in the <i>Contractor's</i> scope of supply.
Asset Register	73.	
	73.1	Not Used.
	73.2	The <i>Client</i> also maintains an asset register in respect of Contractor Equipment purchased by the <i>Contractor</i> for use in Providing the Works, in respect of which title vests in the <i>Client</i> following payment in respect of such items in accordance with the contract.
	73.3	Upon the later of (a) expiry of the <i>term</i> and (b) expiry of the last <i>defect correction period</i> under the contract (or, if earlier, termination of the contract), the <i>Client</i> has the option of either (i) requiring the <i>Contractor</i> to return such items referred to in clause 73.2 to the <i>Client</i> , or (ii) permitting such items to be retained by the <i>Contractor</i> and deducting the market value of such items from any sums due from the <i>Client</i> to the <i>Contractor</i> 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 Scopeother than a design for which the *Contractor* is responsible in accordance with the 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 of the relevant Scheme or other element of work.
- 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 act 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).

80.3 For the avoidance of doubt, no reduction in the volume of work instructed to the *Contractor* under the contract (including as a result of a suspension or de-scope under clause 103A, or the non-instruction of any Scheme or volume under Schedule 8) gives rise to any right for the *Contractor* to seek a review, increase or other adjustment of the Prices or any rate in the Price List, nor any claim by the *Contractor* against the *Client* for loss of profit, loss of revenue, or other consequential loss arising from such reduction.

The *Client* commits to instruct to the *Contractor* a volume of work not less than the Minimum Volume Commitment as determined in accordance with Schedule 8, subject to the *Client's* rights under paragraphs 7.4 and 13.2 of Schedule 8, clauses 103.5 and 103A, and any other right of the *Client* to reduce or omit work under the contract.

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Contractor's liabilities

- 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. In the event of a discrepancy between the Insurance Table and the insurances stated in the Contract Data, the Contract Data prevails.
- 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. In the event of a discrepancy between the Insurance Table and the insurances stated in the Contract Data, the Contract Data prevails.
- 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 *commencement date* until the final 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>
Liability of the <i>Contractor</i> for claims made against it arising out of the <i>Contractor's</i> failure to use the skill and care normally used by contractors providing works similar to the <i>works</i>	The amount 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 provisions of this clause apply if the Contract Data states that the *Contractor's* obligation for design is to use the skill and care normally used by contractors designing works *similar* to the *works*.
The *Contractor* is not liable for a Defect in its design unless it failed to carry out that design using the skill and care normally used by contractors designing works *similar* to the *works*.
If the Contractor corrects a Defect for which it is not liable under the contract it is a compensation event.
The *Contractor* provides insurance for claims made against it arising out of its failure to use the skill and care normally used by contractors designing works *similar* to the *works*. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the *commencement date* until the end of the period stated in the Contract Data.
- 83.5 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.
- 83.6 The *Contractor* keeps the *Client* fully informed of any claims under the insurance policies and complies 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* co-operates 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 also complies with any relevant government or regulatory guidelines governing the determination of claims and complies with claims reporting requirements under the Civil Procedure Rules.
- 83.7 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

Termination and reasons for termination

90

- 90.1 A Party may terminate the *Contractor's* obligation to Provide the Works for a reason stated in these *conditions of contract* by notifying the other Party and giving details of the reason for terminating. After a notification to terminate has been issued, the *Contractor* 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 *Client* may terminate if the *Client* has notified the *Contractor* that the *Contractor* has not stopped one of the following defaults within two weeks of the date when the *Client* notified the *Contractor* of the default.
 - Substantially failed to comply with the contract (Reason 2).
 - Substantially hindered the *Client* (Reason 3).
 - Substantially broken a health or safety regulation under the contract or another contract between the *Client* and the *Contractor* (Reason 4).
 - A Serious Incident has occurred (Reason 4A).
 - A High Potential Near Miss has occurred (Reason 4B).
- 90.4 The *Contractor* may terminate if
- the *Client* has not paid an amount due under the contract within thirteen weeks of the *assessment day* which followed receipt of the *Contractor's* application for it (Reason 5) or
 - the *Client* has instructed the *Contractor* to stop or not to start any substantial work or all work for a reason which is not the *Contractor's* 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).
- 90.5 The *Client* 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 *Client* may terminate for any other reason (Reason 8).
- 90.8 The *Client* may terminate the contract if the *Contractor* does not achieve a Minimum Standard (as defined in Schedule 6) required for one or more Key Performance Indicators and fails to improve its performance in accordance with clause 103 (Reason 9).
- 90.9 The *Client* may terminate if, in accordance with section 78 of the Procurement Act, the *Client* considers that the contract was awarded, or has been modified, in material breach of the Procurement Act or any regulations made under it, provided the requirements of section 78(7) of the Procurement Act have been met (Reason 10).
- 90.10 The *Client* may terminate if the *Contractor* has, since the award of the contract, become an Excluded Supplier or an Excludable Supplier (including by reference to an associated person), provided the conditions in section 78(8) of the Procurement Act (where applicable) have been met (Reason 11).
- 90.11 The *Client* may terminate, in accordance with section 78 of the Procurement Act and provided the conditions in section 78(3) to (8) of the Procurement Act (where applicable) have been met, where any subcontractor has, since the award of the contract, become an Excluded Supplier or an Excludable Supplier, provided that before exercising its right to terminate under this clause 90.11 the *Client* (a) notifies the *Contractor* of its intention to terminate and its reasons for doing so, (b) gives the *Contractor* a reasonable opportunity to make representations about whether this clause 90.11 applies, and (c) gives the *Contractor* a reasonable opportunity to end its subcontract with the relevant subcontractor and, if necessary, to find an alternative subcontractor (Reason 12).

- 90.12 The *Client* may terminate the contract if the *Contractor's* eligibility has been suspended under clause 103A.2(2) for a continuous period exceeding 2 weeks (Reason 13).

Procedures on termination

91

- 91.1 On termination, the *Client* may complete the *works*. The *Contractor* leaves the *site* and removes the *Contractor* Equipment and returns any *Client* Equipment and surplus Plant and Materials to the *Client*.

Payment on termination

92

- 92.1 The amount due on termination includes
- an amount due assessed as for normal payments,
 - the cost of Plant and Materials provided by the *Contractor* which are on the *site* or of which the *Contractor* has to accept delivery and
 - 50% of any amounts retained by the *Client*.

Where a retention bond is in force under clause 50.8 in respect of any Scheme or Schemes, the reference in this clause 92.1 to "amounts retained by the *Client*" does not include any amount in respect of which the retention bond has been provided. The retention bond remains in force following termination and may be called upon by the *Client* in accordance with its terms.

- 92.2 If the *Client* terminates for Reason 1, 2, 3, 4, 4A, 4B, 9, 10, 11, 12 or 13 the amount due on termination also includes a deduction of the forecast additional cost to the *Client* of completing the *works* and any other loss or damage suffered by the *Client* as a result of the termination or the event giving rise to it.
- 92.3 If the *Contractor* terminates for Reason 1, 5 or 6 or if the *Client* terminates for Reason 8, 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.
- 92.4 Within thirteen weeks of termination or, if later, of completion of the *works* by the *Client* or Others, the *Client* assesses the final amount due. The final payment is the amount due on termination less the total of previous payments. The *Client* gives the *Contractor* details of the assessment. Payment is made within three weeks of the *Client's* assessment.
- 92.5 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 released to the *Contractor* within 30 days after the later of (a) the date of termination and (b) the expiry of the last *defect correction period* under the contract. The *retention* is otherwise paid in accordance with the provisions of clause 51.

Where a retention bond is in force under clause 50.8 at the date of termination, the retention bond remains in force until the date on which *retention* would otherwise be released under this clause 92.6, provided that no demand has been made under the retention bond which remains outstanding and unsatisfied at that date.

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 *commencement 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 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 *Adjudicator* within seven days of the notice.

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

(3) The *Adjudicator* decides the procedure and timetable to be followed in the adjudication. In doing so the *Adjudicator* may

- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to take any other action within a stated time which is necessary to reach a decision.

(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. The *Adjudicator* may in the decision

- 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.

(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 licence 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 of them 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 is 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) is borne by the *Contractor*.
- 101.8 Without prejudice to any other right or remedy of the *Client*, the *Contractor* is liable for the recharges payable in respect of the NRSWA Laws stated in Schedule 5 (Recharges).

CDM Regulations

102

102.1 For the purposes of the CDM Regulations

- the *Contractor* is a “contractor”,
- the Principal Contractor is the person identified as such in the Contract Data or, if different, as confirmed for the relevant Contract Year in the Works Allocation Package or for the relevant Scheme in the Scheme Instruction issued under Schedule 8 (Works Allocation Procedure);
- 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 performance reviews in accordance with this clause 103 and Schedule 6 (Key Performance Indicators) 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 *commencement 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 Following each performance review, the *Client* and the *Contractor* may agree actions (including a Performance Improvement Plan in accordance with paragraph 3 of Schedule 6) 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* carries 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 is failing to take 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) or immediately terminate the contract in accordance with clause 90.8.
- 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.

**Material
Performance
Failure and
Suspension from
Allocation**

103A

- 103A.1 If the *Contractor's* forecast performance against a Key Performance Indicator does not achieve the Minimum Standard for that Key Performance Indicator (as defined in Schedule 6), the *Contractor* submits to the *Client* its proposals for improving performance.
- 103A.2 Without prejudice to clause 103A.1 and any other right or remedy of the *Client*, if a Material Performance Failure occurs, the *Client* at any time thereafter, by notice to the *Contractor*, may: (1) suspend the *Contractor's* eligibility to receive further Scheme Instructions or Works Allocation Package volume until the *Client* is satisfied, acting reasonably, that the underlying performance issue has been remedied; and/or (2) instruct the removal of any Scheme or part of a Scheme not yet physically started (de-scope), in which case clause 103A.3 applies.
- 103A.3 No amount is payable to the *Contractor* in respect of loss of profit or other consequential loss arising from a suspension under clause 103A.2(1) or a de-scope under clause 103A.2(2).
- 103A.4 Without prejudice to clauses 103A.1 to 103A.3, if the *Client* considers that a breach of a health or safety Statutory Requirement has occurred or is likely to occur, the *Client* may, on immediate notice to the *Contractor*, suspend the *Contractor's* obligation to Provide the Works, or any part of them, or require the removal of any specified individual, team or item of Plant or Equipment from the *site*, with immediate effect, until the *Client* is satisfied the risk has been removed or adequately mitigated.
- 103A.5 Without prejudice to clause 103A.3, the *Client* may in its absolute discretion elect not to proceed with any Scheme or volume identified in a Draft Works Allocation Package, or to allocate it to a third party, at any time before it is confirmed in an authorised Works Allocation Package or Scheme Instruction, without any liability to the *Contractor*.

Trespass and Nuisance

104

- 104.1 All operations necessary for the construction and completion of the *works*, so far as compliance with the requirements of the contract permits, are 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* among other things in connection with the *works* provides and maintains 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* provides 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 keeps confidential and does 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 the contract).
- 106.3 The *Contractor* ensures 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* does 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 <i>Contractor</i> complies with all Data Protection Laws.
	107.2	The <i>Contractor</i> complies with the <i>Client's</i> data protection policies, procedures and Codes of Conduct for Contractors (available on the <i>Client's</i> website) including any updates as may be available from time to time (" DP Relevant Policies ").
	107.3	The <i>Contractor</i> has and maintains in place throughout the duration of the contract its own policies and procedures to ensure compliance with the Data Protection Laws and the DP Relevant Policies and enforces them where appropriate.
	107.4	The <i>Contractor</i> provides such supporting evidence of compliance with clauses 107.1, 107.2 and 107.3 as the <i>Client</i> may reasonably request and without undue delay, notifies the <i>Client</i> of any breach of this clause 107.
	107.5	Without prejudice to any other rights or remedies of the <i>Client</i> , a breach by the <i>Contractor</i> of this clause 107 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> .
	107.6	The Data Protection Addendum contained in Schedule 4 (Data Protection Addendum) applies.
	107.7	The <i>Contractor</i> indemnifies the <i>Client</i> from and against any Losses incurred or suffered by the <i>Client</i> 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 <i>Contractor's</i> unauthorised processing, unlawful processing, destruction of or damage to any Personal Data processed by the Contractor, its employees or agents who Provide the Works.
Information Security	107A	
	107.1	The <i>Contractor</i> holds and maintains throughout the <i>term</i> a valid Cyber Essentials Plus certification, or (where the <i>Contractor</i> holds a valid ISO 27001 certification or has completed a third-party security assessment at the request of the <i>Client</i>) such alternative certification or assessment as the <i>Client</i> has confirmed in writing is acceptable in lieu of Cyber Essentials Plus (the " Information Security Requirements ").
	107.2	The <i>Contractor</i> complies with the Information Security Requirements and implements and maintains appropriate technical and organisational security measures that • prevent unauthorised access to, and the introduction of viruses and other contaminants into, any information technology systems used in connection with the <i>works</i> or containing any <i>Client</i> data, • use firewalls to secure internet connections and configure secure settings on devices and software, • control access to data and services and protect systems from malware, and • keep software and devices up to date with security patches.
	107.3	The <i>Contractor</i> notifies the <i>Client</i> immediately and in any event within 48 hours of becoming aware of any actual or suspected cyber security incident, including any unauthorised access to, or the destruction, loss, alteration or disclosure of, any <i>Client</i> data or any data processed in connection with the <i>works</i> . Such notification includes all available information about the incident, the likely impact, and the steps the <i>Contractor</i> is taking to contain and remediate the incident.
	107.4	The <i>Contractor</i> does not make or authorise any announcement, other communication or notice about a cyber security incident affecting <i>Client</i> data without the prior written consent of the <i>Client</i> as to the content, media and timing of such communication.
	107.5	Upon request by the <i>Client</i> , the <i>Contractor</i> provides evidence of its compliance with the Information Security Requirements and this clause 107A, including (without limitation) copies of current certifications, audit reports, security policies and incident response procedures.
	107.6	The <i>Contractor</i> complies with any other information security standards notified in writing to the <i>Contractor</i> by the <i>Client</i> from time to time.
	107.7	Without prejudice to any other rights or remedies of the <i>Client</i> , a breach by the <i>Contractor</i> of this clause 107A 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> .

The *Contractor* maintains the cyber liability insurance stated in the Contract Data throughout the *term*.

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 <i>Client</i> or prepared by the <i>Contractor</i> at the request of the <i>Client</i> in connection with the contract ("Proprietary Materials"), are • the property of and vest in the <i>Client</i> absolutely from the time of their creation (and the <i>Contractor</i> assigns with full title guarantee all such intellectual property rights created by it in the course of Providing the Works, • used by the <i>Contractor</i> solely for the purpose of the contract and • sent, if requested, to the <i>Client</i> 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 <i>Contractor</i> at the date of the contract or otherwise created by or on behalf of the <i>Contractor</i> after the date of the contract independently from and outside the scope of the 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 <i>Contractor</i>. The <i>Contractor</i> grants to the <i>Client</i>, 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 the contract) to use the Contractor Intellectual Property and to copy the Contractor Intellectual Property for any purpose relating to the contract including the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment, extension and repair of the <i>works</i>. The licence carries the right to grant sub-licences and is transferable to third parties to use and reproduce the Contractor Intellectual Property in connection with such purposes.
	108.3	The <i>Contractor</i> does 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 <i>Client</i>.
	108.4	The <i>Contractor</i> indemnifies the <i>Client</i> from and against any Losses incurred or suffered by the <i>Client</i> arising as a result of or in connection with any third party claim relating to a breach of Intellectual Property Rights prepared by the <i>Contractor</i> which are used in the Provision of the Works or receipt or use by the <i>Client</i> of the <i>works</i>.
	108.5	The <i>Contractor</i> ensures that the <i>works</i> are safe and without risk when properly used in accordance with designs and specifications prepared by it.
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 on commencement of the contract. However • the <i>Contractor</i>, subject to compliance with Applicable Law, provides to the <i>Client</i> within such timescales as the <i>Client</i> stipulates (acting reasonably) any employee related information in respect of employees assigned to the Provision of the Works which the <i>Client</i> 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 <i>Contractor's</i> obligation to Provide the Works, the <i>Contractor</i> 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 <i>Client</i> • the <i>Contractor</i> keeps the <i>Client</i> and any replacement supplier of some or all of the <i>works</i> indemnified in full against any losses arising directly or indirectly in connection with any <i>Contractor</i> employee who is held or alleges that its employment has or

	should have transferred to the <i>Client</i> (or such replacement supplier) on any date following the date of the contract and
	in the event TUPE applies both Parties comply with their obligations under TUPE.
109.2	Where a Scope Variation Order provides for the addition of work to the Scope which may constitute a relevant transfer for the purposes of TUPE, the TUPE provisions contained in that Scope Variation Order apply. To the extent of any conflict between this clause 109 and the TUPE provisions in a Scope Variation Order, the Scope Variation Order prevails.
109.3	On expiry or termination of the contract (or on de-scoping of any work added by a Scope Variation Order), the <i>Contractor</i> - provides to the <i>Client</i> or any replacement supplier a list identifying all employees wholly or mainly assigned to the relevant works, together with such employee-related information as the <i>Client</i> may reasonably require, no later than 2 months before the relevant exit date, - provides an updated final list no later than 14 days before the relevant exit date, - co-operates with the <i>Client</i> and any replacement supplier to ensure an orderly transfer of employees where TUPE applies, and - keeps the <i>Client</i> and any replacement supplier indemnified against all Losses arising directly or indirectly in connection with any claim by any employee of the <i>Contractor</i> relating to employment on or before the date of transfer.
109.4	The <i>Contractor</i> includes provisions equivalent to this clause 109 in each of its subcontracts.
Background Checks	110
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.
Environment	111
111.1	The <i>Contractor</i> 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 is no breach of Environmental Law.
111.2	The <i>Contractor</i> further warrants that it does 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> forthwith at its own expense, alters, repairs or replaces any affected <i>works</i> or part thereof, or otherwise remedies the breach.
Environmental Information Regulations	112
112.1	The <i>Contractor</i> accepts that the <i>Client</i> may be obliged to disclose Information in accordance with 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> does not itself (or allow any sub-contractor or third party to) respond to any person making a request for information under the EIR and passes all such requests to the <i>Client</i> within three working days of receipt.
Real Living Wage	113
113.1	The <i>Contractor</i>

		- 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 - co-operates and provides all reasonable assistance to the <i>Client</i> in monitoring the effect of the Real Living Wage.
Worker Protection	113A	
	113A.1	The Contractor complies with the Worker Protection (Amendment of Equality Act 2010) Act 2023 and takes all reasonable steps to prevent the harassment of its personnel and any other workers engaged in Providing the Works by third parties, including employees, agents or customers of the <i>Client</i> .
	113A.2	The Contractor ensures that all workers engaged in Providing the Works (whether employed by the Contractor or any subcontractor) are provided with safe working conditions that comply with all Applicable Law relating to health and safety at work, including the Health and Safety at Work etc. Act 1974 and regulations made under it.
	113A.3	Without prejudice to clause 17 (ABAS Laws), the <i>Contractor</i> ensures that no Modern Slavery Practice (as defined in the Modern Slavery Act 2015) is used in the provision of any labour or services connected with the works. The Contractor maintains policies and procedures to prevent modern slavery in its supply chain and provides evidence of compliance upon request by the <i>Client</i> .
	113A.4	The <i>Contractor</i> ensures that all workers engaged in Providing the Works are entitled to all statutory employment rights applicable to them, including (where applicable) the right to a written statement of particulars, the national minimum wage, working time limits, paid annual leave and statutory sick pay, and that no worker is subject to unlawful deductions from wages or unfair treatment in respect of these entitlements.
	113A.5	The <i>Contractor</i> indemnifies the <i>Client</i> against all Losses arising from any failure by the <i>Contractor</i> or any subcontractor to comply with this clause 113A.
Conflicts of interest	114	
	114.1	The <i>Contractor</i> - checks for any Conflict of Interest at regular intervals and in any event not less than once in every six months, - notifies the <i>Client</i> in writing immediately upon becoming aware of any Conflict of Interest and - 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.
	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>
Assignment	115	
	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.

Contracts (Rights of Third Parties) Act 1999	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 is 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 is deemed to be a party to the contract.
	117	
IR35	117.1	The <i>Contractor</i> complies with Schedule 7 (IR35).
Emergency support	118	
	118.1	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) • Service relays, • Service transfers, • Water ingress, • Purge and relights, • Reinstatement, and • Supervision, 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.
Price Adjustment for Inflation	119	
	119.1	This clause 119 applies from the first Adjustment Date. No adjustment to the Prices under this clause 119 is made before the first Adjustment Date. The <i>Contractor</i> may request an adjustment in respect of an Adjustment Date by giving written notice to the <i>Client</i> no earlier than 1 January and no later than the second Monday of February in the year in which the relevant Adjustment Date falls. If the <i>Contractor</i> gives such notice, the adjustment is applied in respect of that Adjustment Date. If the <i>Contractor</i> does not give such notice, no positive adjustment is applied at the <i>Contractor's</i> request, but the <i>Client</i> may in its sole discretion calculate and apply the adjustment for any Adjustment Date.
	119.2	The Base Date Index (B) for each index stated in the Contract Data is the average of the monthly values of that index for the preceding calendar year used as the reference point for the Latest Index (L) under clause 119.3.
	119.3	The Latest Index (L) for each index stated in the Contract Data is the average of the monthly values of that index for the calendar year immediately before the relevant Adjustment Date (for example, if the Adjustment Date falls in April 2028, the Latest Index is the average of the monthly values of that index for January to December 2027).
	119.4	The Price Adjustment Factor (PAF) at each Adjustment Date is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it, expressed as a percentage increase or decrease (the "Weighted Index Percentage Change"), subject to clause 119.5.
	119.5	The PAF is subject to the following limits (a) If both the Weighted Index Percentage Change and the CPIH Percentage Change (being the percentage change in CPIH Inserted: calculated by comparing the average of the monthly CPIH values for the calendar year immediately before the relevant Adjustment Date with the average of the monthly CPIH values for the calendar year before that, expressed as a percentage increase or decrease) are positive or zero, the PAF is capped at the CPIH Percentage Change (b) if both the Weighted Index Percentage Change and the CPIH Percentage Change are negative, the PAF is the figure closer to zero; and (c) if one figure is negative and the other is positive or zero, the PAF is the negative figure. The <i>Client</i> notifies the <i>Contractor</i> of the PAF at least 20 Business Days before the Adjustment Date, stating the percentage change for each index, the Weighted Index

Percentage Change, the CPIH Percentage Change, which limit under this clause 119.5 applied, and the resulting adjusted rates.

- 119.6 If an index stated in the Contract Data is changed after it has been used in calculating a PAF, the calculation already made is not changed. The PAF calculated at the last Adjustment Date before Completion of the last Scheme or other element of work under the contract to achieve that status is used for calculating any amount for price adjustment under clause 119.7 after that date.
- 119.7 At each Adjustment Date, the PAF for that Adjustment Date applies to the rates in the Price List as adjusted under this clause 119 at the immediately preceding Adjustment Date (or, for the first Adjustment Date, to the unadjusted rates stated in the Price List at the *commencement date*). The rates so adjusted become the rates in the Price List for all purposes of the contract from that Adjustment Date, so that annual adjustments compound. Schemes instructed on or after an Adjustment Date are valued at the rates in the Price List as adjusted to that date. Schemes instructed before an Adjustment Date continue at the rates applicable when instructed.
- 119.8 A compensation event is assessed using the rates in the Price List at *commencement date* levels (before any adjustment under this clause 119). Where the change to the Prices for a compensation event is assessed under clause 63.2 by reference to cost incurred or forecast to be incurred after the first Adjustment Date, that cost is adjusted to *commencement date* levels by dividing it by the Cumulative Adjustment Factor. The Cumulative Adjustment Factor is the product of (1 + PAF) for each Adjustment Date that has occurred up to and including the most recent Adjustment Date before the date of the compensation event, where PAF is expressed as a decimal (for example, 3% = 0.03).

Works Lite System 120

- 120.1 The *Client* (or its licensor) retains all right and title, including all Intellectual Property Rights, in the Works Lite system (including any underlying software and components). The *Contractor's* only rights in respect of Works Lite are those granted under this clause 120, and the *Contractor* has no encumbrance in respect of it.
- 120.2 The *Contractor* maintains in force throughout the *term* a valid licence for Works Lite on terms approved by the *Client*, and uses Works Lite solely for the purpose of Providing the Works under the contract.
- 120.3 If the *Contractor* fails to maintain a licence in accordance with clause 120.2, the *Client* may suspend the issue of further Works Allocation Packages or Scheme Instructions until the licence is reinstated.
- 120.4 The *Contractor* ceases to have any right to use Works Lite on and from the end of the *term*, and ceases, and procures that its personnel cease, to use Works Lite following the end of the *term*.
- 120.5 The *Client* is not liable to the *Contractor* for any Losses arising from any failure, error, or unavailability of Works Lite, save to the extent caused by the negligence of the *Client*.

Change of Control 121

- 121.1 The *Contractor* notifies the *Client* in writing promptly, and in any event within 14 days, upon the occurrence of a Change of Control of the *Contractor*. Such notice includes details of the Change of Control and the identity of any person who *has obtained Control of the Contractor*.

Key Personnel 122

- 122.1 The *Contractor* ensures that all Key Personnel retain their involvement in the *works* throughout the *term* and continue to perform their respective Key Roles. The *Contractor* does not change any *Key Personnel* without the prior written consent of the *Client*, except where any *Key Personnel* retire, are dismissed, die, voluntarily leave, or can no longer work due to illness or disability.
- 122.2 To replace any *Key Personnel*, the *Contractor* gives the *Client* not less than 3 months' notice, stating the proposed replacement's name, qualifications and experience.
- 122.3 The *Client* decides whether to consent to the proposed replacement (such consent not to be unreasonably withheld). Consent is reasonably withheld if the proposed replacement's qualifications or experience are insufficient for the role.
- 122.4 If the *Client* consents, the replacement commences at least 3 months before the departing person leaves to facilitate handover. The cost of any replacement during this handover period is not a Defined Cost.

- 122.5 If the *Contractor* replaces Key Personnel without complying with this clause 122, any amounts attributable to work by that replacement are Disallowed Cost until the non-compliance is rectified. If the replacement has lower expertise, the *Client* adjusts the applicable rate accordingly.
- 122.6 Key Personnel and Key Roles are those stated in the Contract Data.

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.

Definitions	Y1.1	(1) In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays. (2) The payment due date is the 14th day following the first Thursday after the <i>Client</i> receives a compliant application for payment (or, if that day is not a Business Day, the next Business Day). 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 Friday following the payment due date (or, if that day is not a Business Day, the next Business Day).
	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.
Assessing the amount due	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.
The adjudication	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]

This Schedule 2 is supplemented from time to time by Scope Variation Orders entered into by the Parties in accordance with clause 12.3A. The Scope Description set out in any Scope Variation Order forms part of this Schedule 2 from the Effective Date stated in that Scope Variation Order. A register of all Scope Variation Orders in force is maintained by the *Client*.

SCHEDULE 3

Payment Process

1. Background

- 1.1 Invoicing and payment in respect of *works* provided under the contract is 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 is thereafter incorporated into the contract, save that the period within which payment is made by the *Client* to the *Contractor* as stated in the contract is not increased under any such amended or replacement process.

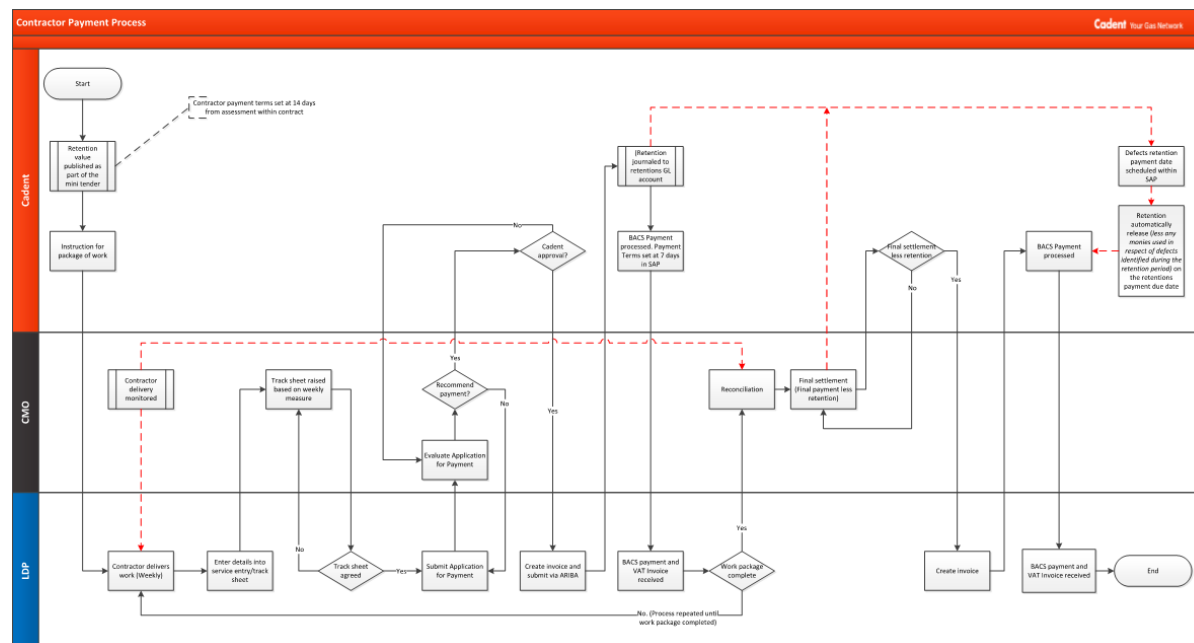
2. Billing Process

- 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 Section 5 (Payment) of the *conditions of contract* payment is weekly based on weekly track sheets which the *Contractor* provides to the *Client* in accordance with Annex 1 and Annex 2. Weekly track sheets are in the form and contain the information specified by the *Client* from time to time.
- 2.3 The *Contractor* is 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 last Scheme or other element of work under the contract to achieve that status, as defined by *Client* verified systemised measurements that ultimately feed into the *Client's* project completion voucher ("PCV") data.

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 1 to Schedule 3 (Billing Process)



Annex 2 to Schedule 3 (Billing Timeline)

LDP Contractor Payment Profile																																						
Week 1						Week 2						Week 3						Week 4						Week 5						Week 6								
H	T	W	T	F	S	H	T	W	T	F	S	H	T	W	T	F	S	H	T	W	T	F	S	H	T	W	T	F	S	H	T	W	T	F	S			
14 Day Payment Terms																																						
Week 1 Activity	Weekly Work Commenced					n/a	Weekly Tracksheets (T/S) Measured CMO Site Manager.		Weekly T/S Agreed	Weekly Payment value Goods Received	Goods Receipt Cut Off	Vendor to submit Service Entry Sheet (SES) via Ariba. The SES must match the format of the purchase order	Invoice matched and retention allocated	n/a				n/a		Weekly BACS payment processed by Cadent. Supplier Receives Remittance		Weekly certified values received by Contractors	Payment received by Contractors via BACS.	n/a						n/a					n/a			
14 Day Payment Terms																																						
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	Goods Receipt Cut Off	Vendor to submit Service Entry Sheet (SES) via Ariba. The SES must match the format of the purchase order	Invoice matched and retention allocated	n/a				Weekly BACS payment processed by Cadent. Supplier Receives Remittance		Weekly certified values received by Contractors	Payment received by Contractors via BACS.	n/a								n/a			
14 Day Payment Terms																																						
Week 3 Activity						n/a												Weekly Tracksheets (T/S) Measured CMO Site Manager.	n/a	Weekly T/S Agreed	Weekly Payment value Goods Received	Goods Receipt Cut Off	Vendor to submit Service Entry Sheet (SES) via Ariba. The SES must match the format of the purchase order	Invoice matched and retention allocated	n/a									Weekly BACS payment processed by Cadent. Supplier Receives Remittance		Weekly certified values received by Contractors	Payment received by Contractors via BACS.	n/a

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 the 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* 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 the contract, the *Contractor* observes 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:
 - 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*, except where prohibited by law from doing so, informs 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* Processes the Personal Data for the purposes of providing the Services as set out in the 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 the contract and this Addendum.

5. **General**

- 5.1 Any breach of this Addendum constitutes a material breach of the contract.
- 5.2 The provisions of this Addendum are supplemental to the provisions of the Conditions of Contract and do 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 prevail. Compliance by the *Contractor* with the provisions of this Addendum is at no additional cost to the *Client*.

SCHEDULE 5

Recharges

Description or Recharge – All Actual Cost recharged. The admin fee is capped at £250 per item, or 10%, whichever is the lesser amount.

Third Party Damage below the value of £3,000 (excluding VAT) will be dealt with by the **(Agreed Partner direct settlement method)**. Where damage has occurred to a customer's property during our works, this must be promptly addressed to the customer's satisfaction. It is mandated that these claims are handled without the involvement of insurance companies to ensure prompt resolution. Where the partner pays the claim themselves, the recharge will not be applicable and will not attract an admin fee.

If the partner agrees that Cadent will pay the claim the admin fee will be applicable.

Third Party Damage above the value of £3,000 (excluding VAT where applicable) is dealt with via the **(Agreed Client Claims Department settlement method)**.

NRSWA Fixed Penalty Charges

GSOP1 – Failure to restore supplies after unplanned interruption

GSOP2 – Failure to Reinstate Customers premises within 5 working days of engineering works being completed

GSOP3 – Failure to provide alternate heating and cooking facilities to a priority domestic customer

GSOP13 – Failure to provide 7 working days' notice before any planned interruption.

Excessive pipe and fittings volume withdrawn from stores above volume commissioned

CRB Background checks

Training Costs and Refresher Courses

Training – Failure to attend agreed course (Late cancellation or failure to attend)

Any Plant or Vehicle Hire charges, delivery collection or Damages, fuel costs or Personal Protective Equipment.

Any Lost or stolen Cadent equipment, small tools, SLG, Footway Boards or Barriers

Camera Services / Surveys

Non-Negative (Fail) drug and alcohol screening

Cadent Operational Team – i.e. incident, loss of gas

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

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 *Client*

Good Will Payments made to Customers due to failure of the Contractor

Missed Appointment – Agreed with customer team.

Gas Escape / Loss of Gas.

Core Testing Fail – i.e. Highway / or Cadent Appointed.

Abortive Street works costs and wasted charges – Lane Rentals / Road Closures / Permit costs and TTRO's

Abortive Traffic Management Costs or Scheme over runs due to resource issues / incidents.

Defect Corrections including permits and TTRO's, traffic management and any associated costs.

SCHEDULE 6

KPIs

1. Service Levels and KPIs

- 1.1 The Service Levels and KPIs applicable to the *works* are set out in the KPI Document.
- 1.2 For the purposes of this Schedule 6:
- (a) **"KPI Document"** means the document entitled "*Cadent KPIs LDP*" attached as Appendix 1 to this Schedule 6, setting out the KPI measures, targets, descriptions, calculations and (where agreed) Service Credits applicable to the LDP workstream;
 - (b) **"Service Credit"** means the amount stated in the KPI Document as payable by the *Contractor* to the *Client* (by way of deduction from the Prices or otherwise) in respect of a failure to meet the applicable Service Level or KPI;
 - (c) the measurement period for each Service Level or KPI is as stated in the KPI Document;
 - (d) where a target is stated as "*TBC*" or "*Agreed Annually*", the Parties agree the applicable target before the start of each *Contract Year* (or, for the first *Contract Year*, within 20 Business Days of the starting date), failing which the *Client* may set a reasonable target by written notice to the *Contractor*; and
 - (e) **"Material Service Level Default"** means a failure by the *Contractor* to meet any Service Level or KPI that carries a Service Credit, where two or more KPIs are not achieved, or where any single KPI falls more than 10% below the expected target for any two weeks within a 28-day period.
 - (f) **"Serious Service Level Default"** means: (a) a failure to achieve a Green Score Card over a continuous 30-day period; or (b) any KPI falling more than 10% below the target level for a continuous 56-day period.
 - (g) **"Green Score Card"** means achievement by the *Contractor* of the target level for each Key Performance Indicator across all departments (Safety, Customer, Delivery and Commercial) for the relevant measurement period, as determined by the *Client* in accordance with the KPI Document.
 - (h) **"Minimum Standard"** means the target level for each Key Performance Indicator as stated in the KPI Document.
- 1.3 The KPI Document and the tables in this Schedule 6 are organised by network area. Where a target or Service Credit differs between network areas for the same measure, the target and Service Credit stated for the relevant network area applies. In the event of any conflict between the KPI Document and the provisions of this Schedule 6, the provisions of this Schedule 6 prevail.
- 1.4 Service Credits are deducted from the next assessment following the month in which the failure occurred. Service Credits are in addition to, and not in substitution for, any other rights or remedies available to the *Client* under the contract.
- 1.5 The *Client* continuously monitors the *Contractor's* performance against the KPIs and Service Levels and may at any time implement remedial action in accordance with this Schedule 6. In addition, the *Client* operates a five-step Service Recovery Process with formal review points at D14, D28, D42, D56 and D84. Each formal review is undertaken five calendar days following KPI publication.
- 1.6 Where New Scope Items are added by a Scope Variation Order, the supplementary Key Performance Indicators and Service Levels applicable to those New Scope Items are as set out in the relevant Scope Variation Order and, from the Effective Date of that Scope Variation Order, form part of this Schedule 6. The Service Recovery Process set out in paragraph 2 of this Schedule applies to the New Scope Items unless the relevant Scope Variation Order states otherwise.

2. Service Recovery Process

- 2.1 The five-step Service Recovery Process is summarised in the Service Recovery Process table at Appendix 2 to this Schedule 6. The table sets out, for each Step, the review period, process, criteria, actions, improvement requirements, contractual default triggers and escalation responsibilities. The following paragraphs set out the contractual detail for each Step.
- 2.2 **Step 1 (D14 — Month 1, Week 2):** The *Client* reviews the *Contractor's* weekly KPIs by department (Safety, Customer, Delivery, Commercial) for the preceding D7 and D14 performance. If the *Contractor* achieves a Green Score Card across all measures, the *Contractor* retains its full work volume allocation. If the KPI measures are not met, the *Contractor* retains its work volume but the *Client* requires a Performance Improvement Plan in accordance with paragraph 3. Escalation: *Client's* Department Head.
- 2.3 **Step 2 (D28 — Month 1, Week 4):** The *Client* reviews the *Contractor's* KPIs for the D15 to D28 performance period. If the *Contractor* achieves a Green Score Card across all measures, the *Contractor* retains its work volume. If the KPI measures are not met, the *Client* and the *Contractor* review and amend the existing Performance Improvement Plan in accordance with paragraph 3. The *Client* may reduce up to 20% of the *Contractor's* work volume in accordance with paragraph 5. A Material Service Level Default occurs if the conditions in paragraph 1.2(e) are met. Escalation: *Client's* Department Head and Head of Commercial.
- 2.4 **Step 3 (D42 — Month 2, Week 2):** The *Client* reviews the *Contractor's* KPIs for the D28 to D42 performance period. If the *Contractor* achieves a Green Score Card across all measures, the *Contractor* retains its work volume. If the KPI measures are not met, the *Client* and the *Contractor* review and amend the existing Performance Improvement Plan in accordance with paragraph 3. The *Client* may reduce up to 50% of the *Contractor's* work volume in accordance with paragraph 5. A Material Service Level Default occurs if the conditions in paragraph 1.2(e) are met. Escalation: *Client's* Department Head, Head of Commercial and Network Director.
- 2.5 **Step 4 (D56 — Month 2, Week 4):** The *Client* reviews the *Contractor's* KPIs for the D42 to D56 performance period. If the *Contractor* achieves a Green Score Card across all measures, the *Contractor* retains its work volume and passes the gateway in accordance with paragraph 5.6. If the KPI measures are not met, the *Client* may reduce the *Contractor's* work volume in accordance with paragraph 5. The *Client* issues a formal Contract Notification Improvement Notice stating the improvement areas and timescales. A Material Service Level Default occurs if the conditions in paragraph 1.2(e) are met. Escalation: *Client's* Department Head, Head of Commercial and Network Director.
- 2.6 **Step 5 (D84 — Month 3, Week 4):** The *Client* reviews the *Contractor's* KPIs for the D56 to D84 performance period. If the *Contractor* achieves a Green Score Card across all measures, the *Contractor* retains its work volume and passes the gateway in accordance with paragraph 5.6. If the KPI measures are not met, a Serious Service Level Default occurs in accordance with paragraphs 1.2(f) and 5.7, and the *Client* may reduce or remove the *Contractor's* work volume in accordance with paragraph 5. Escalation: *Client's* Department Head, Head of Commercial, Network Director and Divisional Director.
3. **Performance Improvement Plan**
- 3.1 If the *Contractor* fails to meet any Service Level or KPI, the *Client* will (where such failure occurs during the Service Recovery Process) or may (in all other cases) by written notice require the *Contractor* to prepare and submit a Performance Improvement Plan within 48 hours of the date of that notice. The notice notes the KPI failings and identifies the *Client's* Department Head responsible for each Network.
- 3.2 A Performance Improvement Plan must set out:
- (a) the root cause of the failure;
 - (b) the specific actions the *Contractor* will take to remedy the failure and prevent its recurrence;
 - (c) measurable milestones, each with a target date; and
 - (d) the resources the *Contractor* will allocate to implement the plan.
- 3.3 Within 24 hours of receiving a Performance Improvement Plan submitted under paragraph 3.1, the *Client's* Department Head notifies the *Contractor* in writing that it:
- (a) accepts the Performance Improvement Plan;

- (b) requires the *Contractor* to amend the Performance Improvement Plan to address comments specified in the *Client's* notice, in which case the *Contractor* resubmits an amended plan within 24 hours of that notice and this paragraph 3.3 applies again; or
 - (c) rejects the Performance Improvement Plan, stating reasons.
- 3.4 If the *Client* rejects a Performance Improvement Plan under paragraph 3.3(c), the *Client* may:
 - (a) require the *Contractor* to submit a new Performance Improvement Plan within 48 hours, to which paragraphs 3.2 and 3.3 apply; or
 - (b) exercise any other right or remedy available to it under the contract.
- 3.5 Once a Performance Improvement Plan has been accepted under paragraph 3.3(a), the *Contractor* implements it in full and by the dates stated in it. Any amendment to an accepted Performance Improvement Plan (including at Steps 2, 3, 4 or 5 of the Service Recovery Process) meets the requirements of paragraph 3.2, and paragraphs 3.3 and 3.4 apply to the *Client's* review of the amended plan as if it were a new submission.
- 4. **Termination for Performance Failure**
- 4.1 The *Client* may terminate the contract by giving not less than 30 days' notice in writing to the *Contractor* if:
 - (a) a Performance Improvement Plan has been accepted under paragraph 3.3(a) of this Schedule and the *Contractor* fails to perform in accordance with that accepted Performance Improvement Plan;
 - (b) the *Contractor* fails to meet one or more Service Levels or KPIs and the *Contractor's* performance against any such Service Level or KPI shows a downward trend over three consecutive months, measured by reference to the data and methods set out in this Schedule 6;
 - (c) the *Contractor* commits a Serious Service Level Default; or
 - (d) the *Contractor* reaches Step 5 (D84) of the Service Recovery Process more than once in any rolling 12-month period.
- 4.2 Before exercising its right under paragraph 4.1(b), the *Client* gives written notice to the *Contractor* identifying the relevant Service Level(s) or KPI(s) and the performance data on which it relies. The *Contractor* has 15 Business Days from receipt of that notice to make written representations. The *Client* considers those representations in good faith before deciding whether to proceed with termination.
- 4.3 Termination under this paragraph 4 is treated as termination for Reason 9 for the purposes of clause 92 (Payment on termination).
- 4.4 The *Client* may exercise its right of termination under this paragraph 4 in respect of the whole of the contract or, at its sole discretion, in respect of only part of the *works* or *Scheme(s)*, and clause 91 applies accordingly.
- 4.5 Where the *Client* removes 100% of the *Contractor's* workload under paragraph 5.3 or paragraph 5.7 following a Serious Service Level Default, such removal constitutes a termination for Reason 9 for the purposes of clause 92 (Payment on termination). The *Client* is not required separately to establish non-compliance with an accepted Performance Improvement Plan under paragraph 4.1(a) where termination arises from a Serious Service Level Default.
- 5. **Work-Volume Reduction**
- 5.1 The *Contractor* is initially entitled to the full allocation of work volume under the Works Allocation.
- 5.2 If the *Contractor* fails to achieve a Green Score Card at Step 2 or any subsequent Step of the Service Recovery Process, or if the *Contractor* commits a Serious Service Level Default, the *Client* may in its discretion reduce the *Contractor's* work volume allocation in accordance with paragraph 5.3.
- 5.3 The *Client* may reduce the *Contractor's* work volume on a graduated basis as follows: (a) at Step 2 (D28): up to 20% of the work volume; (b) at Step 3 (D42): up to 50% of the work volume; (c) at Steps 4 (D56) and 5 (D84): up to 100% of the work volume. Any reduction is implemented over an agreed transitional period to facilitate improvements and resource reallocation.

- 5.4 Where the *Client* reduces the *Contractor's* work volume under this paragraph 5, the *Client* may redirect the relevant *works* to another contractor appointed by the *Client*.
- 5.5 If additional expenditure is required to complete *works* via another contractor following a reduction in the *Contractor's* work volume, the *Client's* Head of Commercial issues a formal notification of the impact and cost recovery. Such cost recovery is additional to any Service Credits and cost-of-failure charges.
- 5.6 If the *Contractor* achieves a Green Score Card at any Step of the Service Recovery Process, the *Contractor* is moved back to Step 1 of the Service Recovery Process. If the *Contractor* achieves a Green Score Card at Step 4 (D56), it also passes the gateway for consideration of the same work streams within the same geography. If the *Contractor* achieves a Green Score Card at Step 5 (D84), it also passes the gateway for consideration of the same work streams within the same geography and for consideration of the same and new work streams in any geography. The *Client* may, in its discretion, consider restoring the *Contractor's* work volume allocation where the *Contractor* demonstrates sustained improvement.
- 5.7 Upon the occurrence of a Serious Service Level Default, the *Client* may in its discretion close any Performance Improvement Plan and remove up to 100% of the *Contractor's* workload.
- 5.8 The *Contractor* acknowledges and agrees that any suspension or reduction in work volume under this paragraph 5 does not constitute a basis to allege that the *Client* has repudiated the contract, and does not entitle the *Contractor* to payment of any loss (including loss of profit) or damage.

APPENDIX 1

KPI Document

[INSERT]

APPENDIX 2

Service Recovery Process Map

[Insert Service Recovery Process table here — see Service Recovery]

SCHEDULE 7

IR35

1. Definitions

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

“Cadent Company”	is any company within the Cadent Group of Companies.
“Cadent Group of Companies”	is all subsidiary and holding companies of the <i>Client</i> 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.
“Costs”	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement.
“Deemed Employee”	a person who the <i>Client</i> has determined is providing services to the <i>Client</i> in circumstances which fall within section 61M(1)(d) of the ITEPA.
“Disagreement Process”	the status disagreement process operated or to be operated by the <i>Client</i> or another Cadent Company in accordance with IR35 for representations to be made to the <i>Client</i> or the relevant Cadent Company concerning the determination of a worker's employment status for tax purposes.
“Employment Taxes”	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.
“HMRC”	HM Revenue & Customs.
“Information”	means any information, documentation and/or evidence required to be provided and/or submitted by the <i>Contractor</i> to the <i>Client</i> or another Cadent Company in accordance with this Schedule 7.
“Intermediary”	a third party which meets one of Conditions A to C set out in sections 61N(9) to (11) of the ITEPA.
“IR35”	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.
“IR35 Data”	the meaning set out in paragraph 9.1.
“ITEPA”	Income Tax (Earnings and Pensions) Act 2003 (as may be amended from time to time).
“Labour Supply Chain”	the <i>Contractor's</i> 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.
“Recoverable Liabilities”	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.
“Status Determination”	a determination in accordance with IR35 as to whether or not a worker is a Deemed Employee.
“Status Determination Statement”	a status determination statement provided by the <i>Client</i> (or which the <i>Client</i> may be obliged to provide) in accordance with IR35.
“Supervisory Authority”	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.
“Tax Authority”	HMRC and any court, tribunal or other competent tax authority.
“Works”	the <i>works</i> or services and any element of them which are to be provided by the <i>Contractor</i> under the 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 are involved in the provision of the Works are engaged via an Intermediary; and
- 2.1.3 it ensures 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 the contract.

3. Compliance with IR35

3.1 The *Contractor* complies in all respects with its obligations under IR35 and procures 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 is 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* takes or procures 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* in accordance with 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 the 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 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* or other Cadent Company (as relevant) is required to pay under IR35.
- 6. **Costs of compliance with IR35**

The *Contractor* does not include in any charges or fees payable under the 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 the 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 Labour 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 the 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 4The *Client* and the Contractor are each a separate Controller in respect of Personal Data it Processes in relation to compliance with its obligations under IR35 in connection with the 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 the 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 the 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 the 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.

SCHEDULE 8

Works Allocation Procedure

1. Works Allocation

- 1.1 The Works Allocation for each Contract Year comprises the Schemes and volumes of work that the *Client* intends to instruct to the *Contractor* for that Contract Year as set out in the Works Allocation Package issued in accordance with this Schedule.
- 1.2 The Works Allocation is expressed as a target abandonment length by diameter profile for the relevant Contract Year (the "Target Abandonment Length").
- 1.3 A Works Allocation Package may instruct work on an annual, ad-hoc or multi-year basis at the *Client's* discretion. Where work is instructed on a multi-year basis, the relevant Works Allocation Package states the period over which such work is to be delivered.
- 1.4 The purpose of the Works Allocation is to enable the *Client* to:
 - 1.4.1 establish that work is delivered to meet its regulatory obligations including the requirements of the Health and Safety Executive and Ofgem;
 - 1.4.2 build financial forecasts;
 - 1.4.3 identify mandatory Schemes to be delivered;
 - 1.4.4 ensure resources are procured and in place; and
 - 1.4.5 agree commercial terms for the relevant period.
- 1.5 Where New Scope Items are added by a Scope Variation Order, the *Client* may:
 - 1.5.1 (a) include the New Scope Items in the Works Allocation Package for the relevant Contract Year in accordance with this Schedule;
 - 1.5.2 (b) issue a supplementary Works Allocation Package in respect of the New Scope Items;
or
 - 1.5.3 (c) instruct the New Scope Items by way of standalone Scheme Instructions in accordance with paragraph 6.
- 1.6 The provisions of this Schedule (including the Minimum Volume Commitment at paragraph 13, as adjusted by the relevant Scope Variation Order) apply to the New Scope Items from the Effective Date of the relevant Scope Variation Order.
- 1.7 This paragraph 2 applies to Contract Year 1 only and takes precedence over the other provisions of this Schedule to the extent of any inconsistency.

2. Contract Year 1 Transitional Provisions

- 2.1 The *Client* may at any time before or after the *commencement date* issue Scheme Instructions to the *Contractor* in accordance with paragraph 7 (Scheme Instructions), and such Scheme Instructions are treated for all purposes of the contract as if they formed part of the Works Allocation Package for Contract Year 1.
- 2.2 The *Contractor* ensures that by the *commencement date* it has mobilised sufficient personnel, equipment, subcontractors and other resources to commence work on Schemes instructed by the *Client* and to deliver the volumes indicated by the *Client* for Contract Year 1.
- 2.3 Paragraph 14 (Defined Cost of Developing the Works Allocation) applies to any costs incurred by the *Contractor* in mobilising before the *commencement date*.

- 2.4 If the *Contractor* is not mobilised to the *Client's* reasonable satisfaction by the *commencement date*, paragraph 8 (Fallback Procedure) applies as if references to the Delivery Plan not being approved were references to the *Contractor* not being mobilised.
3. **Draft Works Package**
- 3.1 For each Contract Year, the *Client* issues a Draft Works Package to the *Contractor* on or before 31 August in the preceding Contract Year (or the nearest subsequent Working Day).
- 3.2 The Draft Works Package is in sufficient detail to enable the *Contractor* to develop its Delivery Plan for carrying out the work in order to deliver the proposed Works Allocation in accordance with the contract.
- 3.3 The Draft Works Package:
- 3.3.1 states the Target Abandonment Length for the relevant Contract Year by length and diameter profile (reflecting any shortfall or overperformance in delivery in prior Contract Years);
 - 3.3.2 is based on a proportion of remaining metallic works in the relevant local authority area;
 - 3.3.3 identifies which Schemes are mandatory (being Schemes which must be delivered in the relevant Contract Year) and which (if any) are candidate Schemes from which the *Contractor* may select for inclusion to facilitate efficient packaging, planning and delivery;
 - 3.3.4 for each Scheme forming part of the Draft Works Package provides (to the extent available):
 - 3.3.4.1 a scheme reference number;
 - 3.3.4.2 the pipe object number(s);
 - 3.3.4.3 approximate location;
 - 3.3.4.4 design drawings (where available);
 - 3.3.4.5 pre-construction survey information template to be completed by the *Contractor* (if applicable);
 - 3.3.4.6 relevant health and safety information held by the *Client* including any existing health and safety file; and
 - 3.3.4.7 any change to the allocation of the roles of Principal Designer and Principal Contractor stated in clause 24A.2 for the purposes of the CDM Regulations;
 - 3.3.5 states the pricing information applicable to the proposed Schemes by reference to the Price List (with durations and service counts applied to the agreed schedule of rates), such that each Scheme is allocated a fixed Scheme Value derived from the Price List rates.
- 3.4 High priority Schemes are mandated for delivery by the *Contractor* within a given Works Allocation or specific timeframe. The *Client* has absolute discretion in prioritising Schemes.
4. **Delivery Plan**
- 4.1 Following receipt of the Draft Works Package, the *Contractor*:
- 4.1.1 reviews and (where applicable) provides comments to the *Client* on the Draft Works Package;
 - 4.1.2 undertakes any pre-construction work required by the Scope; and

- 4.1.3 develops a Delivery Plan,
- in each case in accordance with the Scope.
- 4.2 The development of the final Works Allocation and the Delivery Plan is an iterative process during which the *Contractor*:
- 4.2.1 works with and co-operates with the *Client* in order to agree and comply with a programme for undertaking the activities described in paragraph 3.1;
- 4.2.2 provides regular progress reports to the *Client* not less than weekly and when reasonably requested by the *Client* regarding the progress of those activities; and
- 4.2.3 otherwise promptly provides draft plans and anticipated budgets, answers queries and provides such further information requested by the *Client* as is reasonably necessary for the *Client* to understand the proposed Delivery Plan and develop the final Works Allocation,
- such that the *Contractor* provides a complete draft Delivery Plan for each Contract Year to the *Client* on or before 30 September in the preceding Contract Year (or the nearest subsequent Working Day).
- 4.3 The Delivery Plan:
- 4.3.1 confirms the organisational structure, headcount (including key personnel and their roles, location and costs) the *Contractor* will use in order to deliver the Works Allocation;
- 4.3.2 sets out the proposed programme for the delivery of the Works Allocation divided into quarterly delivery milestones of pipe to be abandoned by diameter profile;
- 4.3.3 sets out the proposed budget for delivery;
- 4.3.4 includes evidence satisfactory to the *Client* that the proposed Delivery Plan is capable of implementation in accordance with the contract and, if implemented, enables the Target Abandonment Length to be achieved;
- 4.3.5 contains all relevant health and safety information required for safely delivering the Delivery Plan including the construction phase plan for the purposes of the CDM Regulations;
- 4.3.6 provides a forecast of the Defined Cost for implementation of the Delivery Plan;
- 4.3.7 provides a forecast of the length in kilometres of pipe to be abandoned, completed and validated per week during that Contract Year;
- 4.3.8 includes any necessary updates to any exit plan; and
- 4.3.9 includes any other information reasonably requested by the *Client*.
- 4.4 The *Client* has due regard to the information provided by the *Contractor* in accordance with this paragraph 3 but is not obliged to take it into account when preparing the final Works Allocation.
- 4.5 Nothing in this paragraph 3 prevents the *Client* at any time, after the issue of the Draft Works Package but prior to the issue of the Works Allocation Package, from making changes to the Draft Works Package provided that the *Contractor* is given reasonable opportunity to update its Delivery Plan to reflect such changes.
5. **Approval of the Delivery Plan**
- 5.1 Within a reasonable period following receipt of the draft Delivery Plan the *Client* either:
- 5.1.1 approves the Delivery Plan, in which case paragraph 5 applies; or
- 5.1.2 rejects the whole or any part of the Delivery Plan, in which case paragraph 4.3 applies.

- 5.2 On or before 20 December in each Contract Year (or the nearest subsequent Working Day), the *Client* either:
- 5.2.1 approves the draft Delivery Plan for the purposes of authorising the *Contractor* to commence pre-construction work and issues a programme approval notice to that effect;
 - 5.2.2 partially approves the draft Delivery Plan for the purposes of authorising the *Contractor* to commence pre-construction work in respect of the authorised element and issues a programme approval notice to that effect; or
 - 5.2.3 rejects the draft Delivery Plan, in which case paragraph 4.3 applies.
- 5.3 Where the *Client* rejects the whole or any part of a draft Delivery Plan, the *Client* provides the *Contractor* with its reasons for such rejection together with any comments or requirements for amending or refining the draft Delivery Plan. The *Contractor* amends the draft Delivery Plan to take account of such matters and submits the amended draft Delivery Plan to the *Client* within such reasonable time period as the *Client* specifies (which process is repeated until such time as the draft Delivery Plan is approved by the *Client* in accordance with this paragraph 4).
- 6. Issue of Works Allocation Package**
- 6.1 The *Client* issues a Works Allocation Package for each Contract Year containing the final Works Allocation and approved Delivery Plan for that Contract Year on or before 31 January in the preceding Contract Year (or the nearest subsequent Working Day).
- 6.2 The Works Allocation Package identifies:
- 6.2.1 the Target Abandonment Length (reflecting any shortfall or overperformance in delivery in previous Contract Years);
 - 6.2.2 the confirmed Schemes (with scheme reference numbers, pipe object numbers, locations and design drawings);
 - 6.2.3 the applicable rates from the Price List (including confirmed durations and service counts for each Scheme);
 - 6.2.4 the Scheme Access Date and Completion Date for each Scheme (or the basis on which such dates are to be determined under clause 30.1);
 - 6.2.5 the quarterly delivery milestones by diameter profile;
 - 6.2.6 any mandatory Schemes; and
 - 6.2.7 any change to the allocation of the roles of Principal Designer and Principal Contractor for the purposes of the CDM Regulations.
- 6.3 The Works Allocation Package authorises the *Contractor* to undertake the works to implement the Works Allocation in accordance with and as set out in the Works Allocation Package subject to and in accordance with the contract.
- 6.4 The *Contractor* acknowledges that in the event that a Material Performance Failure occurs the *Client* may omit any element of the *works* and is free to procure such omitted *works* from any other person without any liability of any kind to the *Contractor* in respect of loss of anticipated profit, loss of contracts, consequential or economic losses or any other Losses.
- 7. Scheme Instructions**
- 7.1 A "Scheme Instruction" is an instruction issued by the *Client* to the *Contractor* in respect of an individual Scheme (or group of Schemes) forming part of the Works Allocation.
- 7.2 A Scheme Instruction states:
- 7.2.1 the Scheme reference number and pipe object number(s);

- 7.2.2 the Scheme Access Date;
 - 7.2.3 the Completion Date (or, where none is stated, the basis on which Completion is to be determined under clause 30.1);
 - 7.2.4 the confirmed duration;
 - 7.2.5 the applicable rates from the Price List; and
 - 7.2.6 any specific requirements or constraints applicable to that Scheme.
- 7.3 The *Contractor* does not commence work on a Scheme until the *Client* has issued the relevant Scheme Instruction (or the Scheme is included in a Works Allocation Package which expressly authorises the *Contractor* to proceed).
- 7.4 Where the *Client* wishes to instruct a Scheme on an ad-hoc basis outside of the Works Allocation cycle, the *Client* issues a Scheme Instruction to the *Contractor* and such Scheme Instruction is treated for all purposes of the contract as if it formed part of the Works Allocation Package for the relevant Contract Year.
- 7.5 Within 5 Working Days of the *Client* issuing a Scheme Instruction, both Parties sign the Scheme Instruction to confirm its terms. The *Contractor* does not refuse or delay signing a Scheme Instruction issued in accordance with this paragraph 6. For the avoidance of doubt, the *Contractor's* obligation to perform the Scheme in accordance with the contract arises upon issue of the Scheme Instruction by the *Client* and is not conditional upon the Scheme Instruction being signed by either Party.
- 8. Fallback Procedure**
- 8.1 If the Delivery Plan is not approved by the *Client* as at 30 September in the preceding Contract Year, the *Client* may issue an interim Works Allocation Package ("Interim Works Package") which contains the *Client's* assessment of the Works Allocation and programme necessary for the continued provision of the works in the forthcoming Contract Year.
- 8.2 The *Client* may in the Interim Works Package propose the durations applicable to each Scheme having regard to the information available to it.
- 8.3 An Interim Works Package is deemed to be the Works Allocation Package and the *Contractor* complies with the Interim Works Package as if it were the Works Allocation Package until such time as the Delivery Plan is approved by the *Client* (such that a final Works Allocation Package is issued) or the matter is otherwise resolved in accordance with the contract (including in accordance with the dispute resolution procedure).
- 8.4 If, by 30 September in the preceding Contract Year, the Delivery Plan has not been agreed and, in the reasonable opinion of the *Client*, the collaborative working arrangements contemplated by paragraph 3 have broken down, the *Client* may in addition to paragraph 7.1:
- 8.4.1 reduce or withhold any incentive payment payable to the *Contractor*;
 - 8.4.2 propose a Works Allocation Package on terms the *Client* considers appropriate;
 - 8.4.3 if the *Contractor* does not accept such Works Allocation Package, reduce the volume of work to be instructed under the contract;
 - 8.4.4 rescind any existing Works Allocation Package or Scheme Instruction which has not been commenced on the site; and
 - 8.4.5 terminate the contract in accordance with clause 90.
- 9. Quarterly Delivery Milestones**
- 9.1 Completion of the Works Allocation is measured against quarterly delivery milestones of pipe abandoned by diameter profile as set out in the Works Allocation Package.

- 9.2 The *Contractor* reports to the *Client* on its performance against each quarterly delivery milestone within 10 Working Days of the end of each quarter.
- 9.3 If the *Contractor* fails to meet a quarterly delivery milestone, the *Client* may:
- 9.3.1 issue a Service Manager Instruction requiring the *Contractor* to take specified remedial steps (including requiring additional resource and weekend working) to recover the programme; and
 - 9.3.2 if the *Contractor* fails to comply with a Service Manager Instruction issued under paragraph 8.3.1, treat such failure as a defect for the purposes of the contract.
10. **Works Allocation Adjustments**
- 10.1 The *Client* may at any time during a Contract Year by notice to the *Contractor*:
- 10.1.1 add a Scheme to the Works Allocation Package;
 - 10.1.2 remove a Scheme from the Works Allocation Package; or
 - 10.1.3 mandate the delivery of a specific Scheme, pipe or diameter within a specified period.
- 10.2 A Scheme added under paragraph 9.1.1 is instructed in accordance with paragraph 6 (Scheme Instructions).
- 10.3 Where the *Client* mandates the delivery of a specific Scheme, pipe or diameter under paragraph 9.1.3, the *Contractor* delivers such work within the period specified by the *Client*. The *Contractor's* failure to comply with a mandate under paragraph 9.1.3 entitles the *Client* to issue a Service Manager Instruction or treat such failure as a defect for the purposes of the contract.
- 10.4 No removal of a Scheme under paragraph 9.1.2, and no exercise by the *Client* of its discretion not to proceed with any Scheme before it is confirmed in a Works Allocation Package, gives rise to any claim by the *Contractor* for loss of anticipated profit, loss of contracts, consequential or economic losses or any other Losses.
11. **Programme and Phasing**
- 11.1 The *Contractor* and the *Client* use collaborative endeavours to agree the programme and phasing of the Works Allocation by length and diameter by no later than 31 January in each Contract Year.
- 11.2 If the programme and phasing is not agreed by the date stated in paragraph 10.1, the *Client* may issue a Service Manager Instruction specifying the programme and phasing to be followed and the *Contractor* complies with such instruction.
- 11.3 If the *Contractor* fails to agree or comply with the programme and phasing in accordance with this paragraph 10, the *Client* may require the *Contractor* to prepare and implement a Performance Improvement Plan in accordance with paragraph 3 of Schedule 6 (Key Performance Indicators) or in such other form and within such timescale as the *Client* specifies.
12. **Monthly Monitoring**
- 12.1 The *Contractor* provides to the *Client* a monthly report on Works Allocation completion by diameter profile, in a format agreed between the *Client* and the *Contractor* (acting reasonably).
- 12.2 The monthly report includes:
- 12.2.1 actual pipe abandoned against programme, by diameter;
 - 12.2.2 forecast of remaining work to be completed in the Contract Year;
 - 12.2.3 details of any programme risks or delays identified; and
 - 12.2.4 proposed mitigation measures for any shortfall.

- 12.3 Following each monthly report, the *Client* may:
- 12.3.1 direct the *Contractor* to take steps to correct the programme (including requesting additional resource and weekend working in accordance with the *Contractor's* operational commitments); and
 - 12.3.2 issue a Service Manager Instruction if, in the reasonable opinion of the *Client*, the *Contractor* is not taking adequate steps to recover the programme.
13. **Project Removal and Mitigation**
- 13.1 The *Client* may, in consultation with its asset management and design teams, remove a Scheme (or part of a Scheme) from the Works Allocation Package during a Contract Year.
- 13.2 A Scheme may be removed without adverse consequence to the *Contractor* where the reason for removal is:
- 13.2.1 a local authority restriction (including a clash of works or a restriction under section 58 of the New Roads and Street Works Act 1991) which prevents the Scheme from being completed in the relevant Contract Year, provided that an agreed project start date in a subsequent Contract Year is confirmed;
 - 13.2.2 a scope variation (supported by the relevant design approval process) which requires re-noticing and road space availability in a subsequent programme year; or
 - 13.2.3 a pressure issue (being a different pressure regime to that provided at the pre-construction phase) which prevents safe execution of the Scheme.
- 13.3 Where a Scheme is removed for a reason which does not fall within paragraph 12.2, including:
- 13.3.1 programme issues due to availability of resource;
 - 13.3.2 inadequate planning around network analysis pressures; or
 - 13.3.3 inadequate pre-enabling works or coordination with the local authority and other statutory undertakers,
- the following consequences apply:
- 13.3.4 the *Contractor* is not entitled to any upward price adjustment under clause 119 (Price Adjustment for Inflation) in respect of the removed Scheme in the following Contract Year;
 - 13.3.5 the *Client* reserves the right to adjust payments made for part-complete Schemes to ensure that the value allocated to remaining works (including remaining pipe object numbers and the confirmed duration) is adequate to complete the Scheme in full; and
 - 13.3.6 the *Client* may take such failure into account for the purposes of the Key Performance Indicators and clause 103 (Performance Reviews).
14. **Minimum Volume Commitment**
- 14.1 The Minimum Volume Commitment for each Contract Year is **[INSERT]** kilometres of pipe to be abandoned (or such other volume as may be agreed between the Parties in writing).
- 14.2 The *Client* commits to instruct to the *Contractor* a volume of work not less than the Minimum Volume Commitment in each Contract Year, subject to:
- 14.2.1 the *Client's* right to reduce work under paragraph 7.4;
 - 14.2.2 the *Client's* right to omit Schemes under clause 103.5 or 103A; and
 - 14.2.3 any other right of the *Client* to reduce or omit work under the contract.

- 14.3 For the avoidance of doubt, no reduction in the volume of work instructed to the *Contractor* below the Minimum Volume Commitment arising from the exercise of any right referred to in paragraph 13.2 gives rise to any claim by the *Contractor* for loss of anticipated profit, loss of contracts, consequential or economic losses or any other Losses.
15. **Defined Cost of Developing the Works Allocation**
- 15.1 Other than in respect of services relating to the development of the Works Allocation and Delivery Plan as set out in this Schedule, the *Contractor* is not entitled to payment in respect of implementing a Works Allocation until such time as the *Client* issues a Works Allocation Package or a Scheme Instruction.
- 15.2 The Parties agree and acknowledge that any costs incurred by the *Contractor* in performing any part of such implementation services prior to the issue of the Works Allocation Package or Scheme Instruction are at the risk of the *Contractor*.
16. **Target Durations and Delivery Model**
- 16.1 The *Client* reserves the right to set target durations, productivity levels and team compositions for the delivery of Schemes, having regard to the nature and complexity of the relevant works.
- 16.2 Target durations proposed by the *Client* are stated in the relevant Draft Works Package or Scheme Instruction and may be adjusted by the *Client* from time to time during a Contract Year by written notice to the *Contractor*.

APPENDIX 1

SCHEME INSTRUCTION TEMPLATE

Scheme Instruction Reference	[SI-XXXX-XXXX]
Date of Issue	[DD/MM/YYYY]
Contract Year	[Year [X] ([YYYY] / [YYYY])]

PART 1 — SCHEME DETAILS	
Pipe Object Number(s)	[Enter pipe object number(s)]
Scheme Description	[Brief description of the Scheme]
Site / Location	[Enter site address and location details]
Local Authority Area	[Enter local authority area]
Diameter Profile	[Enter diameter profile information]
Scheme Access Date	[DD/MM/YYYY]
Completion Date (confirmed duration)	[DD/MM/YYYY]
Applicable Rates from Price List	[Insert applicable rate references from Schedule 3 / Price List, or attach as Annexure]
Scheme Value	[£[AMOUNT] (exclusive of VAT)]
Weather Station	[As per Contract Data / [Insert alternative weather station for this Scheme]]

CDM ROLES AND SPECIFIC REQUIREMENTS

The following CDM Regulations roles apply to this *Scheme* (to be completed only where different from the roles stated in the Contract Data):

Principal Contractor	[As per Contract Data / [Insert name if different]]
Principal Designer	[As per Contract Data / [Insert name if different]]

Specific requirements or constraints applicable to this *Scheme* (in accordance with paragraph 6.2.6 of Schedule 8):

[Insert any specific requirements, constraints, access restrictions, permits, environmental considerations, traffic management requirements, or other conditions applicable to this Scheme. State 'None' if not applicable.]

1. INSTRUCTION

- 1.1 The *Client* instructs the *Contractor* to proceed with the *Scheme* described in Part 1 of this Scheme Instruction in accordance with the terms of the contract.

2. **CONTRACTOR ACKNOWLEDGMENT AND CONFIRMATION**

2.1 By countersigning this Scheme Instruction, the *Contractor* confirms and acknowledges that:

- (a) it has reviewed the *Scheme* details set out in Part 1 and accepts the *Scheme* on the terms stated;
- (b) it will perform the *Scheme* in accordance with the contract, including all applicable Schedules, the Scope and the Price List;
- (c) it will achieve Completion by the Completion Date stated in Part 1 (or, where no Completion Date is stated, on the basis specified in Part 1);
- (d) it has satisfied itself as to the nature and extent of the work comprised in this *Scheme* and is not aware of any matter which would prevent it from performing the *Scheme* in accordance with the contract; and
- (e) the Scheme Value for this *Scheme* is calculated in accordance with the contract by applying the rates in the Price List to the quantities, durations and service counts stated in this Scheme Instruction.

3. **GENERAL**

- 3.1 This Scheme Instruction does not amend or vary any provision of the contract except to the extent expressly stated in this Scheme Instruction.
- 3.2 The *Client* may, by written notice to the *Contractor*, amend or withdraw this Scheme Instruction at any time before the *Contractor* commences work on the *Scheme*. Any amendment or withdrawal after commencement is dealt with in accordance with the contract.
- 3.3 This Scheme Instruction is governed by and construed in accordance with the laws of England and Wales.

EXECUTION

This Scheme Instruction has been executed by the parties on the date(s) stated below.

Signed for and on behalf of the ***Client***:

Signature

Name:

Signed for and on behalf of the ***Contractor***:

Signature

Name:

ANNEXURE

Additional Scheme-Specific Information

(This Annexure forms part of the Scheme Instruction and should be used to record any additional information relevant to the Scheme, including but not limited to: site plans, drawings, risk assessments, traffic management plans, permit references, environmental constraints, or any other supporting documentation.)

Item	Description	Reference
1.		
2.		
3.		
4.		
5.		

SCHEDULE 9

Template Scope Variation Order

The template Scope Variation Order appended to this Schedule is the standard form to be used by the Parties for the purposes of clause 12.3A. The Parties may agree variations to the template to reflect the particular requirements of each Scope Variation Order, provided that each Scope Variation Order includes, as a minimum, the provisions required by clause 109.2 (where applicable) and clause 12.3A.

PRIVATE, CONFIDENTIAL & SUBJECT TO CONTRACT

Dated: [INSERT]

(1) CADENT GAS LIMITED

(2) [INSERT CONTRACTOR NAME]

**Scope Variation Order No. [INSERT] in relation to the
Local Delivery Partner Contract relating to Mains Replacement Works and other specialist asset
maintenance in [Insert Lot Description]
relating to Cadent Gas Limited's gas distribution network**

Private and Confidential

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THIS AGREEMENT is made on [INSERT DATE]

BETWEEN:

(1) **CADENT GAS LIMITED** (registered number 10080864) whose registered office is at Cadent, Pilot Way, Ansty, Coventry, England CV7 9JU (the “**Client**”)

(2) [INSERT CONTRACTOR NAME] (registered number [INSERT]) whose registered office is at [INSERT] (the “**Contractor**”)

each a “**Party**” and together the “**Parties**”

BACKGROUND

- (A) The *Client* is undertaking a programme of mains replacement and associated work in order to achieve mains replacement targets set by the Health and Safety Executive and Ofgem for the *Client*.
- (B) On [INSERT DATE], the *Client* and the *Contractor* entered into a Local Delivery Partner Contract (Contract Number: [INSERT]) for the provision of mains replacement works in [INSERT LOT] (the “**Contract**”).
- (C) The *Client* wishes to add new categories of work to the Scope under the Contract (by way of example, [INSERT — e.g. Non-MRP works, MOBs, connections, compliance, backfill and reinstatement, traffic management]) to be performed by the *Contractor*.
- (D) For the avoidance of doubt, the contract does not alter, remove or affect any existing Schemes already instructed or in progress under the Contract, nor does it modify the Works Allocation Packages, Minimum Volume Commitments or Key Performance Indicators applicable to such existing Schemes.
- (E) [Where applicable — include or delete as appropriate: The new categories of work described in the contract were previously performed by [INSERT OUTGOING PROVIDER NAME] (the “**Outgoing Provider**”) and the contract addresses the transition of those activities to the Contractor, including any issues arising under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“**TUPE**”).]
- (F) Clause 12.3 of the Contract provides that no change to the Contract has effect unless it has been agreed, confirmed in writing and signed by the Parties. Clause 12.3A of the Contract provides for changes to the Contract by way of Scope Variation Order.
- (G) Accordingly, the Parties have agreed to vary the Contract on the terms set out in the contract, for the sole purpose of adding new categories of work to the Scope.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 The words and expressions used in the contract have the same meanings that are ascribed to them in the Contract, save where the context or an express provision of the contract otherwise requires or admits.
- 1.2 The headings in and index to the contract are not deemed part of the contract nor taken into consideration in the interpretation of any of the terms or conditions contained in the contract.
- 1.3 In the contract, unless the context otherwise requires:

“**Effective Date**” means [INSERT DATE];

“**Employment Losses**” means all losses, damages, liabilities (including any liability to taxation), claims, costs and expenses including fines, penalties, legal and other professional fees and expenses, in each case arising from or in connection with any employment or engagement of any person or any claim or allegation by or in respect of any employee, worker or other individual;

“**Exiting Employees**” means those employees of the *Contractor* who are wholly or mainly assigned to the provision of the New Scope Items immediately prior to the relevant exit date;

“**New Scope Items**” means the additional categories of work described in clause 5 and Schedule 1 (Scope Description);

“Outgoing Provider” means [INSERT NAME / Not applicable — delete if not applicable], being the third party (including any construction management organisation, contractor, or other service provider) from whom the performance of the New Scope Items is being transferred to the *Contractor*;

“Staffing Information” means, in respect of each employee: (a) job title and grade; (b) remuneration (including salary, bonus and benefits); (c) working hours and shift patterns; (d) notice periods and length of service; (e) details of any collective agreements; (f) details of any ongoing disciplinary or grievance proceedings; (g) details of any outstanding claims; and (h) such other information as the *Client* may reasonably require;

“Transition Period” means the period of [INSERT] weeks commencing on the Effective Date;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

“Variation Commencement Date” means the date on which the *Contractor* commences performance of the New Scope Items, being [INSERT DATE / the date falling at the end of the Transition Period];

“Variation Price List” means the schedule of rates and prices for the New Scope Items set out in Schedule 2 (Variation Price List).

- 1.4 Unless otherwise expressly set out in the contract, the *Contractor* is not entitled to any adjustment to the Prices, a Completion Date or otherwise to any loss of profit, loss of overhead, loss of revenue, loss of business opportunity, loss of time, or loss of contracts, howsoever and whensoever arising, as a result of the variations to the Contract as detailed in the contract. For the avoidance of doubt, nothing in the contract entitles the *Contractor* to any compensation event, loss or adjustment in respect of existing Schemes.

2. THIS AGREEMENT

- 2.1 With effect from the Effective Date, the Contract is amended as stated in the contract.
- 2.2 The *Client* and the *Contractor* confirm that the contract is supplemental to the Contract and, when executed, is read and construed together with the Contract. Together the documents constitute one instrument and future reference to the Contract is deemed to refer to the Contract as amended by the contract.
- 2.3 The *Client* and the *Contractor* confirm that, save as expressly provided in the contract, the Contract continues in full force and effect. To the extent that the contract is intended to vary and/or supersede the Contract, the terms of the Contract are deemed to have been varied and/or superseded in the manner set out in the contract and upon the Parties' execution of the contract.
- 2.4 The Parties expressly agree that nothing in the contract diminishes, modifies, compromises, releases or settles any obligations, rights, claims or liabilities which otherwise exist under the Contract.
- 2.5 The Parties agree that the contract is immediately fully and effectively binding on them upon their execution of the contract.
- 2.6 In the event of conflict between the contract and the Contract, the contract prevails to the extent of such conflict.

3. CONSIDERATION

For the agreements set out in the contract, the *Contractor* acknowledges receipt of the payment of £1.00 (One Pound Sterling) by the *Client* and the *Client* acknowledges receipt of the payment of £1.00 (One Pound Sterling) by the *Contractor*.

4. SCOPE OF VARIATION

- 4.1 The contract operates solely to add new categories of work to Schedule 2 (Scope) of the Contract. It does not vary the terms applicable to existing Schemes instructed or in progress under the Contract, does not constitute a de-scoping of existing work, and does not give rise to any compensation event under clause 60 of the Contract in respect of existing Schemes.
- 4.2 Existing Schemes and Works Allocation Packages in force as at the date of the contract continue to be governed by the conditions of contract and the Works Allocation Procedure (Schedule 8) as if the

contract had not been entered into, except to the extent that the contract expressly and specifically provides otherwise.

4.3 For the avoidance of doubt, nothing in the contract:

- (a) reduces or modifies the Minimum Volume Commitment applicable to existing Schemes;
- (b) alters any Key Performance Indicator, Service Level or target applicable to existing Schemes;
- (c) changes the Completion Date or any other date applicable to any existing Scheme; or
- (d) affects the *Contractor's* entitlement to payment in respect of work already instructed under existing Schemes.

5. NEW SCOPE ITEMS

5.1 With effect from the Effective Date, the following new categories of work are added to the Scope under the Contract:

[INSERT DESCRIPTION OF NEW WORK TYPES — e.g., connections, compliance, backfill and reinstatement, traffic management]

5.2 The detailed description of the New Scope Items, including the geographical area, applicable standards and specifications, and processes, is set out in Schedule 1 (Scope Description).

5.3 From the Effective Date, the New Scope Items form part of the Scope (Schedule 2 of the Contract) and the Contractor Provides the Works in respect of the New Scope Items in accordance with the Contract as amended by the contract.

5.4 The New Scope Items are subject to the same obligations and standards as apply to the existing Scope under the Contract, including (without limitation) clause 20 (Providing the Works), clause 40 (Tests and inspections) and clause 100 (Third Party Agreements), unless otherwise stated in Schedule 1. For the avoidance of doubt, nothing in this clause 5 modifies the obligations applicable to existing Schemes under the Contract.

6. PRICING

6.1 The pricing for the New Scope Items is as set out in the Variation Price List at Schedule 2 (Variation Price List).

6.2 The Variation Price List supplements Schedule 1 (Price List) of the Contract and, from the Effective Date, the rates and prices in the Variation Price List form part of the Price List.

6.3 [Select as applicable:]

[Option A: The rates and prices in the Variation Price List have been agreed between the Parties.]

[Option B: The rates and prices in the Variation Price List are the rates submitted by the *Contractor* and accepted by the *Client*.]

[Option C: Items within the New Scope Items which are not valued by reference to the Variation Price List are valued in accordance with clause 52 of the Contract.]

6.4 Clause 119 (Price Adjustment for Inflation) of the Contract applies to the rates and prices in the Variation Price List **[from the first Adjustment Date following the Effective Date / in accordance with the indexation provisions set out in Schedule 2].**

6.5 Any items arising in connection with the New Scope Items which are not on the Variation Price List are valued in accordance with clause 52 of the Contract.

7. WORKS ALLOCATION AND INSTRUCTION

7.1 The New Scope Items are instructed in accordance with Schedule 8 (Works Allocation Procedure) of the Contract and are incorporated into future Works Allocation Packages or instructed by standalone Scheme Instructions issued in accordance with paragraph 6 of Schedule 8.

- 7.2 No retrospective adjustment is made to existing Works Allocation Packages in force as at the date of the contract as a result of the contract. The New Scope Items are included in Works Allocation Packages issued after the Effective Date.

7.3 [Select as applicable:]

[Option A: The Minimum Volume Commitment under paragraph 13 of Schedule 8 is not adjusted by the contract. A separate Minimum Volume Commitment of [INSERT] applies to the New Scope Items only.]

[Option B: The Minimum Volume Commitment under paragraph 13 of Schedule 8 is adjusted to [INSERT] to reflect the addition of the New Scope Items, provided that such adjustment does not reduce the Minimum Volume Commitment applicable to existing Schemes below the level in force immediately before the Effective Date.]

[Option C: No Minimum Volume Commitment applies to the New Scope Items. The existing Minimum Volume Commitment applicable to existing Schemes is unchanged.]

- 7.4 The *Client* may include the New Scope Items in the Works Allocation Package for the relevant Contract Year, issue a supplementary Works Allocation Package in respect of the New Scope Items, or instruct the New Scope Items by way of standalone Scheme Instructions issued in accordance with paragraph 6 of Schedule 8.
- 7.5 The provisions of Schedule 8 (including Works Allocation Adjustments at paragraph 9 and Project Removal at paragraph 12) apply to the New Scope Items in the same way as they apply to existing Scope Items.

8. KEY PERFORMANCE INDICATORS

- 8.1 The supplementary Key Performance Indicators and Service Levels applicable to the New Scope Items are set out in Schedule 3 (Supplementary KPIs).
- 8.2 From the Effective Date, the supplementary KPIs form part of Schedule 6 (Key Performance Indicators) of the Contract.
- 8.3 The supplementary KPIs apply only to the New Scope Items. They do not modify, replace or affect any Service Level, KPI target or scoring applicable to existing Schemes under the Contract.

8.4 [Select as applicable:]

[Option A: The Service Recovery Process set out in paragraph 2 of Schedule 6 of the Contract applies to the New Scope Items.]

[Option B: A modified Service Recovery Process applies to the New Scope Items as set out in Schedule 3.]

- 8.5 The *Contractor* provides reports to the *Client* on its performance against the supplementary KPIs at the frequency and in the format stated in Schedule 3. Such reports are provided separately from (and do not consolidate with) reports on existing Scheme KPIs unless the *Client* directs otherwise.

9. CDM REGULATIONS

- 9.1 For the purposes of the CDM Regulations in relation to the New Scope Items:

(a) the Principal Designer is [INSERT — *Client* / *Contractor* / as per Contract Data];

(b) the Principal Contractor is [INSERT — *Contractor* / as per Contract Data];

- 9.2 The *Contractor* complies with the requirements of the CDM Regulations in Providing the Works in respect of the New Scope Items and with directions or requests for information given by the Principal Designer and the Principal Contractor.
- 9.3 Any specific health and safety requirements applicable to the New Scope Items are set out in Schedule 1 (Scope Description).

10. TUPE

- 10.1 The Parties acknowledge that the addition of the New Scope Items [may / is not expected to] constitute a relevant transfer for the purposes of TUPE.

10.2 [Detailed TUPE in-scope provisions to be inserted where applicable — see drafting note above]

- 10.3 Where TUPE is not expected to apply (or where clause 10.2 is not populated), clause 109 of the Contract continues to apply. The Parties co-operate in the event that TUPE is subsequently found to apply and negotiate in good faith appropriate TUPE provisions at that time.
- 10.4 On expiry or termination of the Contract (or on de-scoping of the New Scope Items under clause 15), the Contractor:
- (a) provides to the *Client* or any replacement supplier a list identifying all Exiting Employees, together with the Staffing Information in respect of those employees, no later than 2 months before the relevant exit date;
 - (b) provides an updated final list no later than 14 days before the relevant exit date;
 - (c) co-operates with the *Client* and any replacement supplier to ensure an orderly transfer of the Exiting Employees where TUPE applies;
 - (d) from the date the *Client* notifies the *Contractor* of a relevant transfer or intended relevant transfer, does not without the *Client's* prior written consent:
 - (i) terminate the employment of any Exiting Employee other than for misconduct;
 - (ii) vary or promise to vary the terms and conditions of employment of any Exiting Employee other than annual pay increases not exceeding [3]% in the ordinary course;
 - (iii) recruit or assign new employees to the New Scope Items; or
 - (iv) redeploy or entice away from the New Scope Items any Exiting Employee; and
 - (e) indemnifies the *Client* and any replacement supplier against all Employment Losses arising from claims by any Exiting Employee relating to employment on or before the date of transfer.
- 10.5 The *Contractor* includes provisions equivalent to this clause 10 in each of its subcontracts relating to the New Scope Items.

11. TRANSITION AND MOBILISATION

- 11.1 The Transition Period commences on the Effective Date and ends on the Variation Commencement Date.
- 11.2 During the Transition Period, the *Contractor*:
- (a) mobilises resources, personnel and equipment necessary to perform the New Scope Items;
 - (b) completes all background checks, training and competency assessments required under the Contract;
 - (c) obtains or arranges access to all systems, licences and accreditations required; and
 - (d) co-operates with the Outgoing Provider (if applicable) to ensure an orderly handover.
- 11.3 During the Transition Period, the *Client*:
- (a) provides all information, documents and site access reasonably required by the *Contractor*;
 - (b) facilitates introductions to relevant stakeholders, local authorities and third parties; and
 - (c) procures co-operation from the Outgoing Provider (if applicable).
- 11.4 If the *Contractor* is unable to commence the New Scope Items by the Variation Commencement Date due to circumstances beyond its reasonable control, the Parties agree a revised Variation Commencement Date.

12. INSURANCE

12.1 [Select as applicable:]

[Option A: The *Client* confirms that the existing insurance under the Contract extends to the New Scope Items. No additional insurance is required.]

[Option B: The additional insurance requirements applicable to the New Scope Items are set out in Schedule 4 (Additional Insurance Requirements). The *Contractor* provides evidence of such cover before the Variation Commencement Date.]

- 12.2 The *Contractor's* obligations under clause 83 (Insurance cover) of the Contract apply to the New Scope Items.

13. DPS AND PROCUREMENT ACT 2023 COMPLIANCE

- 13.1 The Parties confirm that the contract is within the scope of the Dynamic Purchasing System / Dynamic Market under which the Contract was awarded and complies with the Procurement Act 2023 and any applicable secondary legislation.

14. RESOURCE ADEQUACY

- 14.1 The *Contractor* warrants that it has (or, by the Variation Commencement Date, has) sufficient resources, competencies and capacity to perform the New Scope Items without adversely affecting its performance of existing obligations under the Contract.
- 14.2 If the *Contractor* cannot demonstrate resource adequacy to the reasonable satisfaction of the *Client*, the *Client* may defer the Effective Date or terminate the contract by notice to the *Contractor*.

15. PARTIAL DE-SCOPING

- 15.1 The *Client* may remove any or all of the New Scope Items from the Scope by notice to the *Contractor* in accordance with the Contract.
- 15.2 On any such removal, the TUPE provisions at clause 10 of the contract apply mutatis mutandis, with the *Contractor* as the outgoing provider and the *Client* or any replacement supplier as the receiving party.
- 15.3 The *Contractor* has no claim for loss of anticipated profit, loss of contracts, consequential or economic losses or any other Losses arising from any removal of the New Scope Items, consistent with clauses 103.6 and 103A.3 of the Contract.

16. ENTIRE AGREEMENT/NON-RELIANCE ON REPRESENTATIONS

- 16.1 The contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes any prior agreement or arrangement in relation to the same.
- 16.2 Neither Party has entered into the contract in reliance upon, and has no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the contract.
- 16.3 The only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the contract and which is expressly set out in the contract are for breach of contract.
- 16.4 Nothing in this clause 16 is interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

17. ASSIGNMENT

The contract takes effect as an amendment to the Contract. Accordingly no right or obligation under the contract may be assigned other than to the extent permitted by the Contract.

18. NOTICES

Any notice to be given by either Party under the contract is subject to the requirements of clause 13 of the Contract.

19. WARRANTY

Each Party warrants and represents to the other with respect to itself that it is duly authorised to execute, deliver and perform the contract.

20. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties do not intend that any term of the contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

21. **GOVERNING LAW & DISPUTES**

The contract and any dispute or claim arising out of or in connection with it or its subject matter is subject to the same governing law, jurisdiction and dispute resolution provisions as are incorporated in the Contract.

22. **JURISDICTION**

The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the contract including in relation to any non-contractual obligations.

23. **COUNTERPARTS**

The contract may be executed in any number of counterparts and by the Parties to it on separate counterparts, but does not take effect until each Party has executed at least one counterpart. Each counterpart constitutes an original of the contract, but all counterparts together constitute a single agreement.

THIS DOCUMENT is executed on the date stated at the beginning of this Deed.

Executed by
CADENT GAS LIMITED acting by
an authorised signatory:

(signature)

(print name)

Executed by
[INSERT CONTRACTOR NAME] acting
an authorised signatory:

(signature)

(print name)

Schedule 1 — Scope Description

[INSERT detailed description of New Scope Items, including:

- Description of each new work type
- Geographical area
- Applicable standards and specifications
- Processes and procedures
- Any specific health and safety requirements
- Any specific CDM requirements]

Schedule 2 — Variation Price List

[INSERT]

Schedule 3 — Supplementary KPIs

[INSERT]

Schedule 4 — Additional Insurance Requirements

[INSERT details of any additional insurance required for the New Scope Items, or state:]

“Not applicable — the existing insurance under the Contract extends to the New Scope Items.”