

Dated

2020

(1) NORTH SOMERSET COUNCIL

(2) [CONTRACTOR]

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FORM OF AGREEMENT FOR AN NEC4 ENGINEERING AND  
CONSTRUCTION CONTRACT - OPTION C: TARGET CONTRACT  
WITH ACTIVITY SCHEDULE

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Relating to: WINTERSTOKE ROAD BRIDGE

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**THIS DEED** is dated

**PARTIES**

- (3) [REDACTED] (Company No. [REDACTED][no.]) of/whose registered office is at [REDACTED] **Client**, which expression shall include its successors in the exercise of its statutory functions, successors in title and permitted assignees)

**And**

- (4) [REDACTED] (Company No. [REDACTED][no.]) of/whose registered office is at [REDACTED] (**Contractor**)

**BACKGROUND**

- (A) This Agreement has been entered into pursuant to [set out the tender process in brief terms].
- (B) This Agreement relates to works to be undertaken by the *Contractor* for the *Client* in respect of the design and construction of a new bridge at Winterstoke road (subject to any variations in accordance with this contract) ("**the Project**").
- (C) The *Client* wishes to appoint the *Contractor* to Provide the Works in accordance with the terms of this Agreement.
- (D) The *Contractor* has agreed to Provide the Works in accordance with the terms of this Agreement.

**AGREED TERMS**

**1. INTERPRETATION**

Unless the context otherwise requires:

- (a) any term used with initial capital letters has the meaning given to it in the *conditions of contract*; and
- (b) any italicised term has the meaning given to it in the Contract Data.

**2. CONTRACTOR'S RESPONSIBILITIES**

The *Contractor* will Provide the Works and will carry out its other duties in relation to the contract in accordance with the *conditions of contract* and other contract documents specified in clause 4 below.

**3. CLIENT'S RESPONSIBILITIES**

The *Client* will pay the *Contractor* for carrying out the *works* and will carry out its other duties in relation to the contract in accordance with the *conditions of contract* and other contract documents specified in clause 4 below.

#### 4. CONTRACT FOR THE WORKS

The contract for the *works* comprises:

- (a) the *conditions of contract* in the form of the NEC4 Engineering and Construction Contract Option C: Target contract with activity schedule, June 2017 edition, (including NEC4 January 2019 amendments) incorporating the following secondary Options:
  - (i) X2 (Changes in the law)
  - (ii) X4 (Ultimate holding company guarantee),
  - (iii) X5 (Sectional Completion),
  - (iv) X7 (Delay damages),
  - (v) X9 (Transfer of rights),
  - (vi) X13 (Performance bond),
  - (vii) X15 (The *Contractor's* design),
  - (viii) X16 (Retention),
  - (ix) Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996), and
  - (x) Y (UK) 3 (The Contracts (Rights of Third Parties) Act 1999) and
- (b) the *additional conditions of contract* at Annex 2,
- (c) the completed Contract Data at Annex 1,
- (d) the Scope at Annex 3,
- (e) the Site Information at Annex 4,
- (f) the Activity Schedule at Annex 5,
- (g) the form of *Contractor* warranty at Annex 6,
- (h) the forms of *Contractor's* Consultant warranties as set out in Parts A & B of Annex 7,
- (i) the forms of Subcontractor warranties as set out in Parts A & B of Annex 8,
- (j) the form of performance bond at Annex 9,
- (k) the form of ultimate holding company guarantee at Annex 10,
- (l) the Accepted Programme at Annex 11,
- (m) the Social Value Outcome Plan at Annex 12
- (n) the Schedule of Cost Components, and
- (o) this Agreement.

#### 5. CONTRACT DATA

A copy of the completed Contract Data is annexed to this Agreement at Annex 1.

**6. ADDITIONAL CONDITIONS OF CONTRACT**

A copy of the *additional conditions of contract* is annexed to this Agreement at Annex 2.

**7. PRIORITY OF DOCUMENTS**

7.1 The documents comprising this contract are mutually explanatory and are to be read as a whole.

7.2 Without prejudice to clause 7.1, if there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:

- (a) this Agreement,
- (b) the completed Contract Data,
- (c) the *additional conditions of contract*,
- (d) the other *conditions of contract*,
- (e) the Scope, and
- (f) any other document forming part of the contract.

**8. VARIATION**

8.1 The terms of this Agreement may only be varied by an express written agreement to that effect executed as a deed by the *Client* and the *Contractor*.

8.2 No waiver, estoppel, acceptance, or other ground on which the *Client* may be said to have lost its right to insist on its strict rights under this Agreement, shall have such effect unless expressly so executed as a variation to this Agreement as stated in clause 9.1.

**9. EFFECT OF APPROVAL**

Notwithstanding any other provision of this Agreement, the *Contractor* shall not be relieved from its obligations under this Agreement, nor shall such obligations be removed, restricted, limited or qualified in any way by the presence of the *Client*, the *Project Manager* or the *Supervisor* or their agents or representatives on the Site, or by the carrying out of tests on the instructions of the *Client*, the *Project Manager* or the *Supervisor* or by an instruction, direction, admission, consent, approval, confirmation, sanction, acknowledgement, advice or inspection made or given by or on behalf of the *Client*, the *Project Manager* or the *Supervisor*.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED AS A DEED BY THE *CLIENT***

Namely: .....

by affixing hereto its common seal

in the presence of:-

..... [ ]

..... [ ]

**EXECUTED AS A DEED BY THE *CONTRACTOR***

Namely: .....

by affixing hereto its common seal

in the presence of:-

..... Director

..... Director/Secretary

OR -----

acting by a director and its secretary/two directors whose signatures are here subscribed

namely.....

[Signature]..... Director

and.....

[Signature]..... Director/Secretary

## Part one – Data provided by the *Client*

## 1. General

The *conditions of contract* are the core clauses and the clauses for main Option C and Secondary Options X2, X4, X5, X7, X9, X13, X15, X16, Y(UK)2, Y(UK)3 and Z of the NEC4 Engineering and Construction Contract (June 2017) (including NEC4 January 2019 amendments), as supplemented and amended by the *additional conditions of contract*.

The *works* are: the detailed design and construction of a replacement road over rail bridge at Winterstoke Road

The *Client* is

Name: **North Somerset Council**

Address for communications: Development and Environment  
Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23  
1UJ

Address for electronic communications:  
jason.reading@n-somerset.gov.uk

The *Project Manager* is

Name: [to be completed]

Address for communications: **[to be completed]**

Address for electronic communications: **[to be completed]**

The *Supervisor* is

Name: **to be completed]**

Address for communications: **[to be completed]**

Address for electronic communications: **[to be completed]**

The Scope is in **Annex 3**.

The Site Information is in **Annex 4**.

The boundaries of the site are set out in [ ].

The *language of the contract* is **English**.

The *law of the contract* is the law of **England and Wales**.

The *period for reply* is **two (2)** weeks except that

- The *period for reply* for [ ] is [ ]
- The *period for reply* for [ ] is [ ]

The following matters will be included in the Early Warning Register

**[insert details of any early warning matters the Client requires to be included in the early warning register]**

Early warning meetings are to be held at intervals no longer than **One month**.

## 2. The Contractor's main responsibilities

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

The *key dates* and *conditions* to be met are

<i>condition</i> to be met	<i>key date</i>
(1) [insert condition]	[insert date]
(2) [ ]	[ ]
(3) [ ]	[ ]

The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* at intervals no longer than **one month**

## 3. Time

The *starting date* is [insert date]

The *access dates* are:

part of the Site	date
(1) [whole of the Site]	[the starting date]
(2) [ ]	[ ]
(3) [ ]	[ ]

The *Contractor* submits revised programmes at intervals no longer than **four (4)** weeks.



If the *Client* has decided the *completion date* for the whole of the *works*

The *completion date* for the whole of the *works* is [insert date]

#### **Taking over the *works* before the Completion Date**

The *Client* is not willing to take over the *works* before the Completion Date

#### **If no programme is identified in part two of the Contract Data**

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is two (2) weeks.

#### **4. Quality Management**

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is **two (2) weeks**

The period between Completion of the whole of the *works* and the *defects date* is **fifty-two (52) weeks**.

The *defect correction period* is **four (4) weeks or as agreed between the Project Manager and the Contractor** except that

- The *defect correction period* for [ ] is [ ]
- The *defect correction period* for [ ] is [ ]

#### **5. Payment**

The *currency of the contract* is **Pounds Sterling (£)**.

The *assessment interval* is a **calendar month**.

The *interest rate* is **5% per annum above the base rate in force from time to time of the Bank of England**.

The *Contractor's share percentages* and the *share ranges* are

<i>share range</i>	<i>Contractor's share percentage</i>
<b>less than 80%</b>	<b>10%</b>
<b>from 80% to 90%</b>	<b>25%</b>
<b>from 90% to 120%</b>	<b>50%</b>
<b>greater than 120%</b>	<b>100%</b>

The *exchange rates* are those published in in the Financial Times on the first working day of the month within which the relevant transaction takes place.

## 6. Compensation events

The place where weather is to be recorded is [ ]

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

- the number of days with rainfall more than 5mm
- 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 [ ]

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 [ ]

### If there are additional compensation events

There are no additional compensation events

## 8. Liabilities and insurance

If there are additional *Client's* liabilities

There are no additional *Client's* liabilities

The minimum amount of cover for insurance against loss of or damage to property (except, the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is **One hundred and fifty five million pounds (£155,000,000).**

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in

the course of their employment in connection with this contract for any one event is **Ten million pounds (£10,000,000.00)**.

**If the *Client* is to provide Plant and Materials**

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of **[insert amount in words (£insert sum)]**.

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

The *Client* provides these insurances from the Insurance Table

(1) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ]

(2) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ]

**If additional insurances are to be provided<sup>1</sup>**

The *Client* provides these additional insurances

(1) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ]

(2) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ]

The *Contractor* provides these additional insurances

(1) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ]

(2) Insurance against [ ]

Minimum amount of cover is [ ]

The deductibles are [ ]

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<sup>1</sup> If any adjacent property may need insurance similar to JCT 6.5.1

**Resolving and avoiding disputes**

The *tribunal* is litigation  
The *Senior Representatives* of the *Client* are :

Name (1) Alex Fear

Address for communications

Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ

Address for electronic communications  
alex.fear@n-somerset.gov.uk

Name (2) ... Jonathan Kirby

Address for communications

Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ

Address for electronic communications

jonathan.kirby@n-somerset.gov.uk

The *Adjudicator nominating body* is

.....RICS .....

**Option X4 Ultimate Holding Company Guarantee** The form of Ultimate Holding Company Guarantee to be provided by the *Contractor* is **as set out in Annex 10**

**[Option X5 Sectional Completion]** The *completion date* for each *section* of the *works* is

<i>section</i>	<i>description</i>	<i>completion date</i>
(1)	[ ]	[ ]
(2)	[ ]	[ ]
(3)	[ ]	[ ]
(4)	[ ]	[ ]

**[If Option X7 is used without Option X5]** Delay damages for Completion of the whole of the *works* are **[insert sum]** per calendar day.]

**[If Option X7 is used with Option X5]** Delay damages for each *section* of the *works* are

<i>section</i>	<i>description</i>	<i>amount</i> <i>per</i> <i>calendar day</i>
(1)	[                      ]	[                      ]
(2)	[                      ]	[                      ]
(3)	[                      ]	[                      ]
(4)	[                      ]	[                      ]

The delay damages for the remainder of the *works* are [                      ]  
per calendar day.

**Option X13 Performance Bond** The amount of the performance bond is [10%] of the Prices. The form of performance bond to be provided by the *Contractor* is **as set out in Annex 9**.

**Option X15 The Contractor's design** The *period for retention* following Completion of the whole of the *works* or earlier termination is **12 years**

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by a competent and qualified architect or other professional consultant experienced in carrying out design works in relation to developments of a similar size, nature, value, scope, timescale and complexity to the *works* is, in respect of each claim **Twenty million pounds (£20,000,000.00)**

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

**Option X16 Retention** The *retention free amount* is nil.

The *retention percentage* is three per cent 3%.

The *Contractor* [may][may not] give the *Client* a retention bond.<sup>2</sup>

**Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996** If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due:

The period for payment is **twenty-one (21) days** after the date on which payment becomes due.

**Option Y(UK)3 The Contracts (Rights of Third** Term Beneficiary

<sup>2</sup> Amend as applicable.

**Parties) Act 1999**

**Option Z**

The *additional conditions of contract* are **set out in Annex 2.**

DRAFT

## Part two – Data provided by the *Contractor*

### 1. General

The *Contractor* is

Name: **[to be completed]**

Address for communications: **[to be completed]**

Address for electronic communications: **[to be completed]**

The *fee percentage* is **[insert from tender]**%

The *working areas* are **the Site**

The *key persons* are:

- (1) Name: **[to be completed]**  
Job: **[to be completed]**  
Responsibilities: **[to be completed]**  
Qualifications: **[to be completed]**  
Experience: **[to be completed]**
- (2) Name: **[to be completed]**  
Job: **[to be completed]**  
Responsibilities: **[to be completed]**  
Qualifications: **[to be completed]**  
Experience: **[to be completed]**

The following matters will be included in the Early Warning Register:  
**[insert details of any early warning matters which the *Contractor* requires to be included in the early warning register]**

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

**If the *Contractor* is to provide Scope for its design**

The Scope provided by the *Contractor* for its design is in the Scope

### 3. Time

**If a programme is to be identified in the Contract Data**

The programme identified in the Contract Data is **[in Annex 14][Not Identified]**.

### 5. Payment

The *activity schedule* is **in Annex 5**

The tendered total of the Prices is **[£insert from tender]**.

### Data for the Schedule of Cost Components

The listed items of Equipment purchases for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	time per period
[insert from tender]	[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]	[insert from tender]

The rates for special Equipment are

Equipment	rate
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]

The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

category of person	rate
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]

The rates for Defined Cost of design outside the Workings Areas are

category of person	rate
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]
[insert from tender]	[insert from tender]

The categories of design people whose traveling expenses to and from the Working Areas are included as a cost of the design of the *works* and Equipment done outside the Working Areas are **[insert from tender]**



## **Annex 2      *additional conditions of contract***

The *additional conditions of contract* are part of this contract and are set out below:

### **PART A: Amendments to the *conditions of contract*:**

The *conditions of contract* are amended as set out below:

Delete clause 11.2(2) and replace as follows:

"11.2(2)      Completion is when

- the *Contractor* has done all the work in accordance with this contract which the Scope states it is to do by the Completion Date. If the work which the *Contractor* is to do by the Completion Date is not stated in the Scope, Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work,
- the *Contractor* has corrected all Defects which have been notified prior to Completion, except for those Defects which the *Project Manager* has agreed may be corrected after Completion,
- all the conditions of any Consents relating to the *works* have been complied with and satisfied (save in respect of any matters which will not prevent occupation and use of the *works*) which the *Project Manager* has agreed may be satisfied after Completion,
- any specific requirements or tests on Completion as stated in the Scope have been met or passed and the *Contractor* has submitted all relevant testing and commissioning certificates to the *Project Manager*,
- all workmen employed in connection with the carrying out and completion of the *works* (save in respect of any Defects which the *Project Manager* has agreed may be corrected after Completion) have vacated the Site and all plant, tools and appliances used in connection with the *works* and all surplus materials and rubbish have been removed from the Site,
- the *Contractor* has provided to the *Project Manager* copies of all statutory approvals, operating and maintenance manuals, relevant photographic and video surveys, condition schedules, relevant manufacturers' literature and guarantees and warranties for products and services used in the *works*,
- the *Contractor* has provided the *Client* with all collateral warranties which it is obliged to provide and/or procure in accordance with this contract,
- all information to enable the Principal Designer to issue the Health and Safety File has been provided and where and to the extent that the *Contractor* is responsible for providing the Health and Safety File, it is issued prior to Completion,

- any other pre-conditions to Completion stated in the Scope have been satisfied."<sup>3</sup>

Delete clause 11.2(4) and replace as follows:

- "11.2(4) The Contract Date is the date of execution of the form of Agreement between the Parties to which these *additional conditions of contract* are appended or (if earlier) the date when the *Contractor* first begins to Provide the Works"

Add the following words to clause 11.2(5), after the words "this contract or any other contract with the *Client*":

"or committing or engaging in extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including, without limitation, any activity, practice or conduct which would or could constitute an offence under the Bribery Act 2010 whether in connection with the *works* or otherwise."

In clause 11.2(6) add the following before the word "*works*" in the first bullet point "(which term, as used in this contract, includes any design of the *works* by the *Contractor*"

Delete the words "applicable law" in the second bullet point of clause 11.2(6) and replace with:

"Applicable Law"

In clause 11.2(10), add the following before the full stop at the end of the clause:

“, excluding the Defined Cost of

- correcting Defects (where the cost is not a Disallowed Cost) and
- design and work undertaken in order to correct a failure of the design to meet the functional and performance requirements specified in the Scope”.

Delete Clause 11.2 (12) and replace with:

“Others are people or organisations who are not the *Client*, the *Project Manager*, the *Supervisor*, the *Adjudicator*, Statutory Authorities, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.”

Delete clause 11.2(26) (definition of “Disallowed Cost”) and replace with the following:

- "11.2(26) Disallowed Cost is cost which
- 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

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<sup>3</sup> To be updated during Stage 1 to include design check certificates etc

- follow an acceptance or procurement procedure stated in the Scope,
- comply with a procedure set out in its quality plan,
- give an early warning which this contract required it to give, or
- give notification to the *Project Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not exercising the skill and care normally used by a competent and qualified architect or other professional consultant experienced in carrying out design works in relation to developments of a similar size, nature, value, scope, timescale and complexity to the *works* in the design of the *works*,
- correcting Defects caused by the *Contractor* not complying with a constraint on how it is to Provide the Works stated in the Scope,
- correcting Defects caused by the *Contractor's* failure to comply with a procedure set out in its quality plan,
- correcting Defects which the *Contractor* has previously corrected,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change in the Scope,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested,
- preparation for and conduct of an adjudication or proceedings of the *tribunal* between the Parties.
- Company cars and vehicles used by the *Contractor's* people including use and cost of any of the *Contractor's* supply chain; and

- Any bonus payments made to the *Contractor's* people including use and cost of any bonuses paid by the *Contractor's* supply chain".

Delete clause 11.2(31) and replace with:

"11.2(31) the Price for Work Done to Date is the total Defined Cost attributable to *works* carried out in accordance with the contract up to the assessment date, which the *Contractor* has paid at the time of the assessment date or is committed to pay before the next assessment date (under contracts the *Contractor* has entered into to Provide the Works) plus the Fee applicable to that total Defined Cost."

Delete clause 11.2(32) and replace with:

"11.2(32) The Prices are the lump sum prices for each of the activities on the Stage 2 Target Cost agreed by the *Client* during Stage 1 unless later changed in accordance with this contract".

Add a new clause 11.2(33) as follows:

"11.2(33) Applicable Law is any statute, statutory instrument, regulation, directive, rule, judgement, order, decision, recommendation or statutory guidance made under any statute or directive having the force of law which affects the *works* or the Project or the performance of all or any of the obligations under this contract and any regulation or bye-law of any local authority or Statutory Authorities which has any jurisdiction with regard to the *works* or whose systems the *works* are, or are to be, connected, including without limitation any statutory provisions and any decision, notice, direction, instruction, permission or award of a Competent Authority."

Add a new clause 11.2(34) as follows:

"11.2(34) Competent Authority is any legal person, regulator, Statutory Authorities, and/or any court of law or tribunal in each case having authority under Applicable Law."

Add a new clause 11.2(35) as follows:

"11.2(35) Consents are any and all consents, licences, authorisations, permits, permissions, registrations, filings, exemptions, approvals and the like required from Others in order for the *Contractor* to Provide the Works in accordance with this contract including, without limitation (a) approval of reserved matters or details pursuant to planning permissions, (b) building regulation approval (c) waste management licences or exemptions (d) mobile site licences (e) the approvals from utility providers (f) approvals from the local water authority in relation to working over sewers (g) crane oversail licences and (h) the method statements, plans and strategy included or referred to in the Scope (and a "Consent" is any one of them)."

Add a new clause 11.2(36) as follows:

"11.2(36) "Environment" means any and all of the following: air (including without limitation air within manmade structures or natural structures); water; land (including without limitation the surface and the subsurface of land); and organisms (including without limitation human beings), ecosystems and habitats."

Add a new clause 11.2(37) as follows:

"11.2(37) Environmental Harm" means any adverse impact on or deterioration in the quality of air, land or water or the Environment as a whole, harm to the health of human beings or other organisms, offence to the senses of human beings, impairment or interference with ecosystems and habitats, impairment or interference with the amenity of the Environment or any release, discharge or spillage of Hazardous Substances."

Add a new clause 11.2(38) as follows:

"11.2(38) Funder means a person, firm, company or entity having legal capacity that has provided, or is to provide, finance in connection with the whole or any part of the *works* or the Project or the completed Project, or in connection with the site of the Project, whether acting on its own account, as agent for a syndicate of other parties or otherwise."

Add a new clause 11.2(39) as follows:

"11.2(39) Hazardous Substances" means any substance whatsoever (whether a solid, liquid, gas or any other state of matter and whether alone or in combination with any other substance) which is capable of causing Environmental Harm (including without limitation substances defined as hazardous in the European Waste Catalogue).

Add a new clause 11.2(40) as follows:

"11.2(40) Prevention Event means one of the exceptional events or circumstances listed below provided always that such event or circumstance (a) occurs within the United Kingdom; (b) is beyond the affected Party's control; (c) could not reasonably have been provided against, avoided or overcome by the affected Party; and (d) is not substantially attributable to the affected Party:

- war, invasion, act of foreign enemies;
- rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
- munitions of war (except unexploded ordnance at the Site at the Contract Date), ionising radiation or contamination by radio-activity except where attributable to the *Contractor's* use of such munitions, radiation or radio activity;
- natural catastrophe such as earthquake, hurricane, typhoon or volcanic activity (excluding any event referred to in clause 60.1(13));
- strikes, riots and civil commotion not confined to the employees, servants or agents of the *Contractor* and/or any Subcontractor; or
- the pandemic known as coronavirus (SARS-CoV-2) and the associated coronavirus disease known as COVID -19 (and such other variants of the same pandemic) which stops the *Contractor* completing the *works* or stops the *Contractor* completing the *works* by the date shown on the Accepted Programme.

Add a new clause 11.2(41) as follows:

“11.2(41) Regulator” means any statutory authority being any governmental or local authority, statutory Authorities or other body of competent jurisdiction which has any jurisdiction with regard to the works and/or the performance of the *Contractor's* obligations under this contract and/or with whose requirements the *Client* is required or accustomed to comply and/or with whose systems the works are or will be connected.”

Add a new clause 11.2(42) as follows:

“11.2(42) Regulatory Requirement” means any legally enforceable requirement of any Regulator and any condition, stipulation, proviso, restriction or requirement of any licence, authorisation, consent, omission, order, permit, warrant, approval or notice (whether obtained by the *Client* or by the *Contractor*) required in order to enable the *Contractor* to carry out the *works* or otherwise required in connection with the *works* and any condition precedent or other requirement of any Regulator which must be satisfied prior to the grant, issuance, renewal, variation, extension, continuation and/or reconfirmation of any such licence, authorisation, consent, permission, order, permit, warrant, approval or notice.”

Add a new clause 11.2(43) as follows:

“11.2(42) Stage 1 Contract means the contract dated [insert date] between the *Client* and the *Contractor* for the preliminary design of the new bridge”

Add a new clause 11.2 (44) as follows:

“11.2(44) Scheme Drawings means the drawings created by the *Contractor* in accordance with the Stage 1 Contract”

Add a new clause 11.2(45) as follows:

“11.2(45) “Statutory Authorities means British Telecommunications, Wales and West Utilities and Bristol Water plc and any other statutory authority, undertaker or person who has a statutory right or a right pursuant to a licence granted under any statute to place or maintain any apparatus (including any pipe conduit sewer drain or tunnel) on under or over the Site or to inspect adjust repair alter renew reposition or remove such apparatus.

Add a new clause 11.2(39) as follows:

“11.2(39) “Works” or “works” (whether capitalised or italicised or not) includes any design of the *works* by the *Contractor*.

Delete clause 12.1 and replace as follows:

“12.1 In this contract, except where the context shows otherwise:

- words in the singular also mean in the plural and the other way round,
- words in the masculine also mean in the feminine and neuter and the other way round,
- references to a document include any revision made to it in accordance with this contract,
- references to a statute or statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and includes corresponding legislation in any

- other relevant part of the United Kingdom and any code of practice made under it and references to a standard include any current relevant standard that replaces it."

Insert the word ", instruction" in clause 13.7, after "A notification"

Delete clause 14.1 and replace as follows:

"The *Project Manager's* or the *Supervisor's*:

- acceptance of a communication from the *Contractor*
- acceptance of the *Contractor's* design or
- acceptance of the *works*

and/or the carrying out of any inspection or test does not change the *Contractor's* responsibility to Provide the Works, its liability for Defects or its liability for its design."

Add as new bullet points to clause 15.1 after "delay Completion:

- require a change to the Accepted Programme,
- change the forecast of Defined Cost,"

Delete the second sentence in clause 16.3 and replace with:

"A reason for not accepting is that:

- the proposed area is not necessary to Provide the Works or
- the proposed area is used for work not in this contract or
- adding to the Working Areas in the way proposed will interfere with the *Client's* activities or use of property or cause it to suffer or incur additional loss or costs or
- the *Client* is not entitled to allow the additional area to be used."

Add before the full stop at the end of the first sentence in clause 17.1:

"or between the documents which form part of this contract and Consents or Applicable Law"

Add the following sentence at the end of clause 18.1:

"The *Contractor* warrants that in entering into this contract it has not:

- communicated to any person other than the *Client*, or a person duly authorised by the *Client*, the amount or approximate amount of the tender or submission, or proposed tender or submission, leading to this contract except where the disclosure, in confidence, of the approximate amount of the tender or submission was necessary to obtain insurance premium quotations required for the preparation of the tender or submission; or
- entered into any agreement or arrangement with any person, or requested of any person, that it or they shall refrain from tendering or competing, that it

or they shall withdraw any tender or submission once offered or that it or they will vary the amount of any tender or submission to be submitted."

Delete clause 19.1 and replace with the following:

"19.1 If a Prevention Event occurs, the *Project Manager* gives an instruction to the *Contractor* stating how it is to deal with it and such instruction does not result in an increase in any of the Prices or any other amounts due to the *Contractor* under or in connection with this contract."

Add the following words to the end of clause 20.1 before the full stop:

"and in compliance with Consents and Applicable Law"

Add a new clause 20.2 as follows:

"20.2 The *Contractor* does not specify or authorise for use or permit to be used in the *works* any goods, products, materials, substance or building practices which:

- (a) are prohibited by this contract;
- (b) are generally known within the construction industry at the time of use to be deleterious or hazardous to the health and safety of occupants of the *works* or to the durability and stability of the *works* in the particular circumstances in which such goods, products, materials, substances, building practices or techniques are used and having regard to the British Property Federation/British Council for Offices report Good Practice in the Selection of Construction Materials (as may be reviewed or amended from time to time); and/or
- (c) do not comply with relevant British Standard Specifications (or their European Union equivalent) and Codes of Practice and good building practice current at the time of use and/or
- (d) do not comply with any publications of the Building Research Establishment related to the specification of products or materials.

The *Contractor* shall inform the *Client* immediately if the *Contractor* becomes aware whilst carrying out the *works* that any of the items referred to in this clause 20.2 have been specified for use or used."

Add the following new sentence at the end of clause 21.1:

"The *Contractor* accepts sole and exclusive responsibility for its design and for any mistake, inaccuracy, discrepancy or omission in or from such design".

Delete clause 21.2 and replace as follows:

"21.2 The *Contractor* submits the particulars of its design to the *Project Manager* for acceptance at the times and in the manner and format stated in the Scope. A reason for not accepting the *Contractor's* design is that it does not comply with

- the Scope
- any previous design submitted by the *Contractor* which the *Project Manager* has accepted
- Consents



- Applicable Law or
- any other provision of this contract."

In clause 22.1, add the words “, repair, maintenance, reinstatement” after the words “construction, use, alteration”.

Add a new clause 22.2 as follows:

“22.2 The copyright in all documents prepared by or on behalf of the *Client* is and remains the property of the *Client*.”

Add a new clause 22.3 as follows:

"22.3 The *Contractor* indemnifies the *Client* in respect of all costs, claims, damages, proceedings and expenses arising out of breach of copyright by any of the *Contractor*, its assignees or sub-contractors appointed in relation to the *works*."

Amend Clause 25.1 as follows:

Delete “Others” and insert “Statutory Authorities and Others”

In the second bullet point of clause 25.3, add the words “the *Project Manager*, the Statutory Authorities or” after the words “an additional amount to”

Delete clause 26.2 and replace as follows:

"26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that the appointment will not allow the *Contractor* to Provide the Works, or the *Client* is concerned (on reasonable grounds) about

- the financial standing or expertise or experience or insurance cover of the proposed Subcontractor,
- any breach of contract, negligence, late, incomplete or defective works or failure to rectify the same, by the proposed Subcontractor in relation to any work previously performed (whether as contractor or subcontractor of any tier) for the *Client*, or
- the *Client* requires a collateral warranty and the Subcontractor is unable to provide a collateral warranty to the *Client* in a form which is acceptable to the *Client*.

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

Delete the following bullet point from clause 26.3:

- “• the proposed subcontract is an NEC contract which has not been amended other than in accordance with the *additional conditions of contract*”

Add the following bullet points before the full stop after the second from last bullet point in clause 26.3:

- “• they do not represent best value or open market or competitively tendered prices or
- they are inconsistent with the requirements of this contract or
- they limit rights under any collateral warranty to be provided by the Subcontractor to a greater extent than the rights under this contract in relation to the relevant subcontract works.”

Add a new clause 26.5 as follows:

“26.5 Unless otherwise agreed with the *Project Manager*, the *Contractor* ensures that every Subcontractor is appointed on subcontract terms which are consistent in all material respects with the terms of this contract and which pass down all relevant obligations under this contract to the Subcontractor including (but not limited to) the following

- Main responsibilities
- Time
- Quality Management
- Payment
- Compensation Events
- Title
- Liabilities and Insurance
- Termination

in each case with the necessary changes applicable to the Subcontractor (e.g. by reason of the lesser scope of the Subcontractor's works).”

Amend Clause 27.1 as follows:

Delete “Others” and insert “Statutory Authorities and Others”

Amend Clause 27.2 as follows:

Delete “Others” and insert “Statutory Authorities and Others”

Add a new clause 27.5 as follows:

“27.5 The *Contractor* complies with any rules, regulations, policies and procedures (including health and safety policies and quality assurance procedures) issued by the *Client*.”

Add a new clause 27.6 as follows:

“27.5 The *Contractor* obtains all Consents unless otherwise stated in the Scope”.

Delete clause 28.1 and replace as follows:

“28.1 The *Contractor* shall not assign this contract without the written consent of the *Client*. The *Client* may assign or transfer its rights under this contract to any third party without the consent of the *Contractor* being required.”

Delete clause 29.1 and replace as follows:

- "29.1        The Parties do not disclose information obtained in connection with this contract or the *works* except
- where expressly permitted under this contract,
  - with the written agreement of the other Party,
  - as necessary to carry out their duties under the contract,
  - to the extent necessary to comply with Applicable Law or the requirements of any Competent Authority or
  - to a Party's professional advisers or auditors."

Add the following words to the end of clause 30.1:

"The *Contractor* proceeds regularly and diligently to Provide the Works in accordance with this contract and uses all reasonable endeavours to prevent or reduce any delay in the progress of the *works*"

Insert new clause 30.4 as follows:

- "30.4        The *Contractor* uses all reasonable endeavours to mitigate the effects of any delay in the performance of its obligations."

Add as a new bullet point in clause 31.3 after the first bullet point:

- "it is more onerous on the *Client* or Others"

Amend Clause 31.2 as follows:

Fourth bullet point. After "*Client*" insert ", Statutory Authorities"

Fifth bullet point. After "*Client*" insert ", Statutory Authorities"

In clause 33.1, at the end of the second sentence, insert the words:

"and is on a non-exclusive basis"

Insert a new clause 33.2 as follows:

"33.2

- 33.2.1        The *Contractor* shall permit the *Client* and/or persons authorised by it ("Operatives") to access, use and/or occupy the Site or the *works* or part of them before Completion for the purposes described in the Scope ("Operatives' Works"). Any such access, use or occupation shall not constitute take over under clause 35 of this contract.

- 33.2.2        The *Contractor* shall take all reasonable steps to manage the execution of Operatives Works by Operatives and to co-ordinate any Operatives' Works with the *works* so as to minimise (as far as reasonably practicable) any disruption or interference to Operatives Work caused by the carrying out of the *works* (and vice versa).

- 33.2.3        The *Contractor* shall afford all reasonable facilities for Operatives in the execution of Operatives' Works to enable them to execute such work subject to the *Contractor's* reasonable requirements as to security and health and safety. In particular (but without limitation) the *Contractor* shall:

- provide a suitable means of access to and egress from the relevant part of the Site for Operatives; and
- allow Operatives to enter the Site to deliver and install plant, goods and materials to the relevant part of the Site at times to be agreed."

Add the following new bullet point in clause 35.2 after the first bullet point:

- "for the purposes described in clause 33.2 or"

Insert at the end of clause 40.1 before the full stop:

"and

- complies with the relevant parts of BS EN ISO 9001, BS EN ISO 14001, OHSAS 18001 or equivalent,
- incorporates appropriate sector quality schemes for the *works*, and
- has third party certification from an approved accreditation body or is operating in preparing for accreditation within six (6) months of the Contract Date"

In clause 40.2 delete the words "is that it does not allow the *Contractor* to Provide the Works" from the first paragraph and replace with:

"is that it:

- does not allow the *Contractor* to Provide the Works and/or it does not represent a realistic approach for the *works*;
- is inadequately prepared or is not practicable; or
- does not comply with the requirements of clause 40.1."

Insert a new sentence at the end of the second paragraph of clause 40.2:

"The *Contractor* complies with the accepted quality plan."

Add a new clause 40.4

"40.4 Any Subcontractor appointed by the *Contractor* operates a quality system enabling it to comply with the *Contractor's* quality management system."

Delete the words "applicable law" at the end of clause 41.1 and replace with:

"Applicable Law"

Insert a new clause 41.8 as follows:

"41.8 The *Contractor*, upon reasonable notice, allows such person(s) as the *Client*, acting reasonably, may notify, access to the *works* for the purposes of inspecting the same and affords such person(s) all reasonable assistance in the conduct of their inspections."

Delete clause 44.2 and replace as follows:

"44.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*, in accordance with clause 44.2A. The *defect correction period* begins at Completion for Defects notified before Completion which the *Project Manager* has agreed may be corrected after Completion and when the Defect is notified for other Defects."

Insert a new clause 44.2A as follows:

- "44.2A In correcting any Defect, the *Contractor*, the Subcontractors and their personnel:
- cause the minimum amount of interference and disruption as is reasonably possible to the carrying out of other works at the Site and the use and/or occupation of the Site;
  - comply with any reasonable directions and security precautions for the Site;
  - comply with any Site access protocols,
  - shall be accompanied if the *Client* so requires;
  - make good as soon as reasonably practicable and in any event within any period stipulated by the *Client* to the reasonable satisfaction of the *Client* any loss, damage or injury thereby caused to the Site or any part or parts thereof or to the property of any occupiers and/or visitors at the Site; and
  - at the end of each day ensure that the Site is left in a good and clean condition cleared of all unused materials, plant, goods and equipment."

Add a new clause 47 as follows:

- "47 Nothing in clauses 40 to 46 affects any other right or remedy under the contract or at law, including the *Client*'s right to claim damages for a Defect as a breach of contract."

Insert a new clause 50.7 as follows:

- "50.7 In assessing the amount due, the *Project Manager* is entitled to retain the whole of the Price for Work Done to Date until the *Contractor*:
- has signed this contract
  - submits to the *Project Manager* policies and certificates for the insurances required by this contract
  - provides the *Client* with any [ultimate holding company guarantee][parent company guarantee] required by this contract, duly executed
  - provides the *Client* with any performance bond required by this contract, duly executed"

Insert a new clause 51.6 as follows:

- "51.6 Subject to Y2.3, the *Client* may deduct from any money 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 this contract."

Add the following bullet points to clause 60.1(1):

- a change to the Scope arising as a result of site conditions
- a change to the Scope to resolve any error, ambiguity or discrepancy
- in or between any documents forming part of the Scope for which the *Contractor* is responsible or assumes responsibility under this contract or
- between any documents forming part of the Scope for which the *Contractor* is responsible or assumes responsibility under this contract and the Applicable Law"

In clause 60.1(5), delete the full stop and insert, not as a bullet point:

"provided that where the Other in question is the provider of utility services to the Site, the *Contractor* notifies the Other in question of when that Other is required to carry out its work and does all that it reasonably can to co-ordinate the work of that Other with the *works* so as to avoid any delay or disruption to the *works*."

Delete clause 60.1(10) and replace as follows:

"60.1(10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless

- the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection; or
- it was otherwise reasonable in the circumstances for the *Supervisor* to instruct the *Contractor* to search."

Add the following words to the end of clause 60.1(11):

"but if it is reasonable for the *Supervisor* to do the test or inspection in the light of a Defect (whether or not any further Defect is discovered) neither the test or inspection, nor any delay caused by it, is a compensation event."

Delete clause 60.1(12)

In clause 60.1(19), delete "An event" and insert:

"A Prevention Event".

Clause 60.1(20)

Insert the following wording before the full stop:

"PROVIDED always that the quotation for the proposed instruction was not requested as a result of any change initiated or proposed by the *Contractor*, including (but not limited to) any change initiated or proposed by the *Contractor* in accordance with clause 36 (Acceleration) and/or clause 16 (Contractor's proposals) and/or Option X21"

Delete clause 60.2

Delete clause 60.3

Amend the final paragraph of clause 61.3 to read as follows:

"If the *Contractor* does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices, the Completion Date and Key Dates are not changed."

Delete the first bullet point of the second paragraph of clause 61.4 and replace as follows:

- arises by reason of any act, omission, breach or default (including any insolvency) of the *Contractor*, any Subcontractor or supplier, or any other person for whom the *Contractor* is responsible"

Insert the following new clause 61.8:

"61.8 If the *Contractor* believes that the issue of any instruction or information by the *Project Manager* (not expressed to be a change in

the Scope) constitutes or will give rise to a compensation event, the *Contractor* must, (save in circumstances of emergency) as soon as reasonably practicable and in any case before acting on the instruction or other information, notify the *Project Manager* of the *Contractor's* belief by raising an early warning and allow the *Project Manager* time to consider the impact of the instruction or other information in relation to the *Contractor's* notice."

Add the following words at the end of the first sentence of clause 62.2:

"unless the quotation relates to a compensation event under clause 60.1 (13) and (19) in which case the quotation shall comprise proposed delay to the Completion Date and Key Dates only.

Delete the first sentence of clause 63.1 and replace as follows:

"The change to the Prices is assessed using the breakdown of cost included in the *Contractor's* tender for the *works* or (if none) is assessed as the effect of the compensation event upon:

- the actual Defined Cost of the work already done;
- the forecast Defined Cost of the work not yet done; and
- the resulting Fee."

Add the following words at the end of clause 63.1:

"Provided that where a compensation event has occurred under clause 60.1 (13) and (20) there shall be no change to the Prices".

Insert a new clause 63.1A as follows:

"63.1 A Notwithstanding clauses 63.1, 63.2, 63.3, 63.4 and 63.6, the Prices are not adjusted for any compensation event referred to in clauses 60.1(13) and/or 60.1(19). The right of the *Contractor* to a change to the Completion Date and/or the Key Dates (assessed in accordance with clause 63.5) is the *Contractor's* only right in respect of a compensation event referred to in clauses 60.1(13) and/or 60.1(19)."

Delete the words "the Party which did not provide the Scope" in clause 63.10 and replace with:

"the Party which did not provide and/or does not assume responsibility for the relevant part of the Scope under the *conditions of contract*".

Add a new clause 63.17 as follows:

"63.17 Where a compensation event or its effect is in part attributable to the *Contractor's* fault (including any fault on the part of any Subcontractor or other person for whom the *Contractor* is responsible), the Prices, the Completion Date and/or Key Dates are not changed to the extent attributable to the *Contractor's* fault."

Insert the following wording in clause 65.2 after the words "The quotation is assessed as a compensation event":

"(provided always that the quotation for the proposed instruction was not requested as a result of any change initiated or proposed by the *Contractor*, including (but not limited to) any change initiated or proposed by the *Contractor* in accordance with clause 36 (Acceleration) and/or clause 16 (Contractor's proposals) and/or Option X21)"

Delete clause 70 and replace with the following:

"70.1 The value of Plant and Materials outside the Working Areas is excluded from the Price for Work Done to Date unless

- the Plant and Materials is within the United Kingdom,
- the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title to the Plant and Materials,
- the Plant and Materials is stored separately and is clearly and visibly marked as for the *Client* and this contract,
- the Plant and Materials is adequately protected against water, theft, vandalism and other casualties,
- the Plant and Materials is insured against loss or damage while stored or in transit to the Working Areas for its full reinstatement value under a policy of insurance protecting the interests of the Parties in respect of the usual insured risks for the period until it is brought within the Working Areas and the *Contractor* has provided the *Project Manager* with a copy of the relevant insurance policy and
- the *Contractor* has provided an off site materials bond for the value of the Plant and Materials.

70.2 The off site materials bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is in the form set out in the Scope<sup>4</sup>.

70.3 Where the value of Plant and Materials outside the Working Areas is included in the Price for Work Done to Date

- the *Contractor's* title in the Plant and Materials passes to the *Client*,
- the *Contractor* does not remove the Plant and Materials from where it is stored except for use on the *works* and
- the risk of loss or damage to the Plant and Materials remains with the *Contractor*.

70.4 The value of Plant and Materials within the Working Areas is excluded from the Price for Work Done to Date unless

- title in the Plant and Materials has already passed to the *Client* under clause 70.3 or
- the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title in the Plant and Materials

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<sup>4</sup> Include a form of off site materials bond in the Scope



- 70.5 The *Contractor's* title in Plant and Materials passes to the *Client* when it is brought within the Working Areas, but (subject to clause 80.1) the risk of loss or damage to the Plant and Materials remains with the *Contractor*.
- 70.6 The *Contractor* does not remove Plant and Materials within the Working Areas from where it is stored except for use on the *works* or with the *Project Manager's* permission."

Insert a new clause 73.3 as follows:

- "73.3 The *Contractor* ensures that all Equipment, Plant and Materials delivered to the Site are kept and stored in accordance with the manufacturer's instructions prior to their use, installation or incorporation."

Delete the following bullet point from clause 80.1:

- A fault in the design contained in
  - the Scope provided by the *Client* or
  - an instruction from the *Project Manager* changing the Scope."

and replace as follows:

- A fault in the design of the *works* for which the Contractor is not responsible or does not assume responsibility under the *conditions of contract*."

Delete the first sub-bullet in the sixth main bullet in clause 80.1 and replace with:

- "a Defect,"

Add a new clause 91.9 as follows:

- "91.9 Any termination of the *Contractor's* engagement under this contract is without prejudice to the Parties' rights and remedies accrued up to the date of termination, which shall survive such termination."

Add new clause 92.3 as follows:

- "92.3 Upon termination of this contract (howsoever terminated) the *Contractor*:
- promptly takes all necessary steps to stop performance of the *works* in an orderly manner and with reasonable speed and economy and
  - delivers to the *Client* all documents belonging to the *Client* that shall for the time being be under the control of the *Contractor* or any Subcontractor and
  - gives to the *Client* all hard copy and electronic data (including material prepared by any Subcontractor) prepared by or on behalf of the *Contractor* under this contract. The *Client* has the right to use such material for completion of the *works* and/or the Project."

Delete the wording of A3 in clause 93.2 and replace with:

- "A3 A deduction of any loss or costs incurred by the *Client* as a result of such termination including the additional cost to the *Client* of

completing the whole of the *works* and after termination the *Client* shall not be obliged to make any further payment until the full extent of loss or costs can be fully ascertained and in the event that such loss or cost exceeds the amount otherwise payable to the *Contractor* in accordance with this contract, without prejudice to any other right or remedy of the *Client*, the *Client* may recover such excess from the *Contractor* as a debt."

#### **Option X4: Ultimate Holding Company Guarantee**

Amend Option X4.1 by deleting the words "in the form set out in the Scope" and substituting:

"in the form specified in the Contract Data"

Insert the following words into Option X4.2 at the end of the first sentence before the full stop:

"at its sole discretion"

#### **Option X13: Performance Bond**

Amend Option X13.1 by deleting the words "in the form set out in the Scope" and substituting:

"in the form specified in the Contract Data"

#### **Option X15: The *Contractor's* Design**

Delete Option X15.1 and replace with:

- X15.1      The *Contractor* has examined the Scope and confirms that it will adopt all responsibility for the design contained therein and will undertake the *Contractor's* design to complete the Scope.
- X15.2      For the avoidance of doubt, the *Contractor* therefore accepts the entire responsibility for the design of the works including:
- X15.2.1      all design work prepared before or after the Contract Date including all design work prepared by the *Contractor* in the Stage 1 Contract;
  - X15.2.2      any design carried out by a Subcontractor (including additional design consultants) appointed by the *Contractor*;
  - X15.2.3      any designs contained in the Scope and the *Contractor's* design for the Scope;
  - X15.2.4      any changes requested by the *Client* and approved by the *Contractor* in accordance with this contract
  - X15.2.5      warrants that the design of the *works* is not illegal or impossible

and the *Contractor* shall be responsible for any mistake, inaccuracy, discrepancy or omission contained in any of the above.

- X15.3 The *Contractor* warrants that it has exercised and will continue to exercise all reasonable professional skill and care to be expected of a competent professional designer or combination of designers holding himself out as being competent in providing such services himself in relation to a project of similar scope and nature (except where this contract imposes a higher standard in which case such higher standard will apply) in relation to the following:
- X15.3.1 in the design of the *works*;
  - X15.3.2 to see that the *works* when completed comply with any performance specification or requirement included or referred to in the Scope
  - X15.3.3 to see that the *works* have been or will be designed and executed using up-to-date practice with all reasonable skill and care in a good and workmanlike manner and using only good quality and sound materials of satisfactory quality and consistent with the intended use of the *works*;
  - X15.3.4 to see that the *works* comprise of will comprise only materials and goods which are new and of sound and satisfactory quality and all workmanship, manufacture or fabrication will be to standards necessary for completion of the works in accordance with the Scope;
  - X15.3.5 to see that the *works* will, when completed, comply with all appropriate requirements of any local or public authority and any relevant statutory requirements; and
  - X15.3.6 to see the various elements of the design for the *works* shall be properly co-ordinated and integrated, one with another.
- X15.4 The *Contractor* shall not have or make any claim for any compensation events where and to the extent that the progress of the *works* having been delayed, affected or suspended is due to any mistake, inaccuracy, discrepancy in the Scope (including *Contractor's* design for the Scope undertaken and produced in the Stage 1 Contract and any design for the Scope in this contract), the completion of the design for the Scope and any other requirement under this contract or in any omissions in the Scope or the Consents (save in respect of a change proposed by the *Client* or where the *Client* is in breach of this contract) any failure by the *Client* to provide necessary drawings or documents in due time.
- X15.5 For the avoidance of doubt, in the event that the *Project Manager* has to issue an instruction changing the Scope due any error, mistake, inaccuracy, discrepancy in the Scope produced by the *Contractor* in accordance with the Stage 1 Contract there shall be no increase to the Prices or a change to the Completion Date.
- X15.6 The *Contractor* provides insurance for claims made against it arising out of its failure to use the skill and care normally used by a competent and qualified architect or other professional consultant experienced in carrying out design works in relation to developments of a similar size, nature, value, scope, timescale and complexity to the *works*. The minimum amount of this insurance is as stated in the Contract Data. This insurance provides cover from the *starting date* until the end of the period stated in the Contract Data."

## Option X16: Retention

Insert a new clause X16.2A as follows:

"X16.2A The *Client* has the full beneficial interest in the amount retained without any fiduciary obligation to the *Contractor*. The relationship of the *Client* and the *Contractor* in relation to the amount retained is that of debtor and unsecured creditor."

## **PART B: additional conditions of contract:**

The *conditions of contract* are supplemented by the following additional *conditions of contract* as set out below:

### **Z1 Confidentiality and Freedom of Information Act**

#### **Definitions**

In this clause Z1, the following defined terms shall bear the following meanings:

"**Code of Practice**" means any code of practice or guidance issued under or in connection with the FOIA and the EIR by the relevant governmental or statutory body and as the same may be amended, updated or replaced from time to time;

"**Confidential Information**" means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the contract and:

- the release of which is likely to prejudice the commercial interests of the *Client* or the *Contractor* respectively; or
- which is a trade secret;

"**EIR**" means the Environmental Information Regulations 2004; and

"**FOIA**" means the Freedom of Information Act 2000.

**Z1.1** In respect of any Confidential Information it may receive from the other Party (the "Discloser") and subject always to the remainder of this clause, each Party (the "Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:

- the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the contract;
- the provisions of this clause shall not apply to any Confidential Information which:

- is in or enters the public domain other than by breach of the contract or other act or omissions of the Recipient;
- is obtained by a third party who is lawfully authorised to disclose it;
- is authorised for release by the prior written consent of the Discloser; or
- the disclosure of which is required to ensure the compliance of the *Client* with the FOIA and the EIR and/or any applicable Codes of Practice.

**Z1.2** Nothing in this clause shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the *Contractor* is the Recipient, to the *Contractor's* immediate or ultimate holding company provided that the *Contractor* procures that such holding company complies with this clause as if any reference to the *Contractor* in this clause were a reference to such holding company.

**Z1.3** The *Contractor* acknowledges that the *Client* is subject to the FOIA and the EIR. The *Contractor* notes and acknowledges the FOIA and the EIR and the applicable Codes of Practice. The *Contractor* will act (and will provide reasonable assistance to the *Client* to enable it to act) in accordance with the FOIA and the EIR and the Codes of Practice to the extent that they apply to the *Contractor's* performance under the contract.

**Z1.4** The *Contractor* agrees that:

- without prejudice to the generality of clause Z1.1 the provisions of this clause are subject to the respective obligations and commitments of the *Client* under the FOIA and the EIR and the Codes of Practice;
- the decision on whether any exemption applies to a request for disclosure of information is a decision solely for the *Client*.
- where the *Client* is managing a request as referred to in clause Z1.5 the *Contractor* shall co-operate with the *Client* and shall respond within five (5) working days of any request by the *Client* for assistance in determining how to respond to a request for disclosure.

**Z1.5** The *Client* will consult the *Contractor* in relation to any request for disclosure of the *Contractor's* Confidential Information in accordance with the Codes of Practice.

## **Z2 Physical conditions**

**Z2.1** The *Contractor* has had the opportunity of inspecting the physical conditions and other conditions of the Site and structures upon it and acknowledges that it shall be solely responsible for ensuring that the ground conditions, the Site and any existing structures to be retained under or upon or adjacent to the Site are (or will be upon completion of the *works*) suitable for the development to which the *works* relate. Nothing referred to above in this clause Z2 shall give rise to an increase in the Prices nor to a change to the Completion Date, nor give rise to any right on the part of the Contractor to determine its employment.

**Z2.2** The *Contractor* shall be responsible for dealing with any other matters required to be dealt with in order to complete the *works* including (but without limitation):-

- the provision of services (water, electricity etc as required for the *works*);

- the diversion or removal of conduits or other items under or on the Site;
- the investigation of and need to remove or otherwise address any contamination, pollution or deleterious materials under, in or upon the Site;
- ensuring there is proper physical connection to main services of all drains, pipes, cables, wires and other conducting media to be constructed or placed in and upon the site, subject only to an application by the user of such services for the commencement of supply;

and nothing referred to above in this clause Z2.2 shall give rise to an increase in the Prices, nor to any change to the Completion Date, nor give rise to any right on the part of the Contractor to determine its employment."

**Z2.3** For the avoidance of doubt, in the event that Project Manager has to issue an instruction changing the Scope due to the physical conditions requiring the *Contractor* to do anything which is illegal or impossible there shall be no increase to the Prices or a change to the Completion Date.

**Z2.4** The *Client* gives no warranty or representation as to the accuracy or sufficiency of any soils or survey data or other data contained in any document made available to the *Contractor* by the *Client*, or as to any recommendations or conclusions made or reached in any such document.

### **Z3 Information provided by the *Client***

**Z3.1** The *Contractor* acknowledges that the *Client* does not warrant or give any representation on the accuracy or completeness of any data or information provided to the *Contractor* by the *Client*. The *Contractor* must rely on its own enquiries and carry out such further investigation or surveys as it considers appropriate."

### **Z4 Principal Contractor, Principal Designer and Designer**

**Z4.1** The *Client* appoints the *Contractor* to act as principal contractor, principal designer and designer for the purposes of the Construction (Design and Management) Regulations 2015 ("CDM Regulations") and any replacement or amendment of those Regulations. The *Contractor* shall perform all the functions and obligations required to be performed by the principal contractor, principal designer and designer under the CDM Regulations.

### **Z5 Partnering**

**Z5.1** No partnering agreement which the Parties may enter into (with or without other parties) in connection with the service is intended to create legally enforceable rights or obligations between the Parties or to affect the terms of this contract.

### **Z6 Construction Industry Scheme**

This contract falls within the scope of the Construction Industry Scheme. If the *Contractor* does not hold a valid Inland Revenue Sub-contractor Tax Certificate and is not a local authority or other public body exempt from holding such a certificate, any invoice (and any application for payment submitted by the *Contractor*) separately identifies the cost of labour. The *Client* deducts payment in accordance with the requirements of the Construction Industry Scheme.

### **Z7 Considerate Constructor Scheme**

"The *Contractor*

- registers the Site under the Considerate Constructor Scheme
- complies with the Considerate Constructor Scheme's Code of Considerate Practice in Providing the Works."

## **Z8 Collateral Warranties**

- Z8.1** The *Contractor* when requested by the *Client* is required to procure and deliver a Contractor warranty in favour of any Funder or Third Party substantially in the form contained at Annex 6.
- Z8.2** In the event that the *Contractor* appoints its own design consultants, the *Contractor* is required to procure and deliver a collateral warranty substantially in the form contained at Part A of Annex 7 to the *Client* and in the form contained at Part B of Appendix 7 to any Funder or Third Party. A certified copy of the consultant appointment shall also be provided to the *Client*.
- Z8.3** The *Contractor* when requested by the *Client* is required to procure and deliver a Subcontractor Warranty in favour of the *Client* in substantially the same form contained in Part A of Annex 8 and in favour of a Funder and the Third Party substantially in the same form contained in Part B of Annex 8. A warranty will be required from any Subcontractor with a material design responsibility. A certified copy of the subcontract shall also be provided to the *Client*.
- Z8.4** If the *Contractor* defaults in the execution or the delivery of any of the documents required under clause Z.8, in addition to any other right which the *Client* may have, the *Client* may suspend payment of any sum due to the *Contractor* under this contract until the *Contractor* has remedied its default.

## **Z9 Social Value Outcome Plan**

- Z9.1** <sup>5</sup>

## **Z10 Third Party Agreements**

- Z10.1** Copies of the whole or parts of the following agreements:

MoD Agreement<sup>6</sup>

Network Rail Two Party Overbridge Agreement ("Overbridge Agreement")

(excluding matters related to price and payment) have been or will be provided to the *Contractor* and such agreements or parts are referred to in this clause Z10 as "the Third Party Agreements".

- Z10.2** The *Contractor* shall design, carry out and complete the construction of the *works* in conformity with the *Client's* obligations under the Third Party Agreements discharge all of the *Client's* obligations (so far as applicable to the service) set out in the Third Party Agreements.

- Z10.3** The *Contractor* undertakes to the *Client* that it has performed and shall continue to

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<sup>5</sup> Contractual obligation to deliver social value outcome plan

<sup>6</sup> MoD agreement tbc

perform its obligations under this contract in such manner and at such times so that no act, omission or default of the *Contractor* or any Subcontractor (including the Novated Consultants if any) shall constitute, cause or contribute to any breach by the *Client* of any of its obligations under the Third Party Agreements.

**Z10.4** The *Contractor* shall indemnify the *Client* and keep the *Client* indemnified against all costs, claims, damages, demands, losses, expenses, liabilities or proceedings of whatever kind and howsoever arising from or in connection with (whether directly or indirectly) from breach of the Third Party Agreements due to the *Contractor*.

**Z10.5** Without prejudice to the generality of the above, in relation to the Overbridge Agreement, the *Contractor* is to advance and discharge the obligations of the *Client* as set out in clause 2.2. of the Overbridge Agreement

**Z10.6** The *Contractor* shall ensure that the all risk insurance policy taken out in accordance with the requirements of this Agreement shall be in the joint names if the *Client*, the *Contractor* and Network Rail.

**Z10.7** The *Contractor* acknowledges that Network Rail may be required under freedom of information legislation to respond to request for information and the freedom of information and confidentiality requirements at clause 6.4 of the Overbridge Agreement.

**Z10.8** The *Contractor* acknowledges that the right to all materials at clause 70.1 of this Agreement includes the ability to issue a licence to Network Rail in accordance with clause 6.2. of the Overbridge Agreement

**Z11 Slavery and Trafficking and Anti- Bribery**

**Z11.1** The *Contractor* shall comply with all Applicable Laws pertaining to anti-slavery and human trafficking from time to time in force including but not limited to the Modern Slavery Act 2015. The *Client* is committed to ensuring that within its own supply chain there is no trafficked, bonded, child, forced or compulsory labour or servitude.

**Z11.2** The *Contractor* shall comply with all Applicable Law in relation to a Corrupt Act including the Bribery Act 2010.

**Z12 Protection of the Environment**

**Z12.1** The *Contractor* shall at all times be responsible for and take reasonable and proper steps for protecting the Environment and shall ensure that in carrying out the *works* he does not cause Environmental Harm. In doing so, the *Contractor* shall comply with all Regulatory Requirements.

**Z12.2** The *Contractor* shall be liable for, and shall indemnify the *Client* against any expense (including without limitation site investigation and remediation costs), liability, loss, claim, proceedings (including without limitation informal and formal enforcement proceedings brought by a Regulator), or Regulatory Requirements (including without limitation compulsory remediation required by a Regulator) arising in respect of Environmental Harm as a result of any breach of contract, breach of statutory duty or negligence by the *Contractor* or any of its subcontractors, operatives, employees or agents.

**Z13 Building Information Requirements**

**Z13.1** The Building Information Requirements (BIM) obligations and requirements are set out in the Scope.

**Z14 Limit of Liability**

**Z14.1** The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to Twenty million pounds (£20,000,000.00) and such limit applies in contract, in tort and



otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in this contract for

- delay damages if Option X7 applies,
- the *Contractor's* share of any excess where the Price for Work Done to Date is greater than the total of the Prices
- an infringement by the *Contractor* of the rights of Others,
- loss of or damage to third party property
- death or personal injury to a person other than an employee of the *Contractor*,
- fraud or fraudulent misrepresentation, and
- any liabilities arising due to breach of the Third Party Agreements

#### **Z15 Disclosure of Information**

The *Contractor* shall not without the consent in the writing of the *Client* disclose particulars of the contract to any person or publish or permit to be furnished or published in the press or on radio, television, screen or any other medium any information with regard to the *Client's* business to any person save in so far as may be necessary for the due performance of or compliance with the contract and shall preserve strict confidence with regard to any information of a confidential or secret nature received from the *Project Manager* or from the *Client*.

#### **Z16 Key performance Indicators**

The Key Performance Requirements (KPI) obligations and requirements are set out in the Scope.

#### **Z17 Statutory Authorities**

**Z17.1** The *Client*, as the *Contractor's* principal, will order and pay the Statutory Authorities directly for work to be carried out by the Statutory Authorities. All Statutory Authorities' works will be ordered in advance by the *Client* under the New Road and Street Works Act 1991. However, adjustments shall be made to the Prices as follows:

**Z17.1.1** The extent of diversions required to construct the *works* in accordance with the Scheme Drawings are identified in [identify in Scope] If the *Contractor's* Design results in additional Statutory Authorities works to those given in [identify in Scope], the *Contractor* must obtain estimated costs for the additional Statutory Authorities works from the Statutory Authorities concerned and submit copies of the quotations, with the *Contractor's* design subject to clause Z17.1.4 below. The *Contractor* shall bear the total cost of the additional Statutory Authorities works that result from differences between the Scheme Drawings and the *Contractor's* design *estimates* for the additional works from Statutory Authorities supplied in respect of this clause shall be C4 detailed estimates prepared in accordance with the New Roads and Street Works Act Guidance Notes.

**Z17.1.2** The *Client* will order and pay for the additional work under clause Z17.1.1 above to be carried out by the Statutory Authorities based upon the C4 estimates obtained by the *Contractor*. The *Contractor* shall

reimburse the cost (excluding VAT) of the additional work to the *Client* through deductions from payments of lump sums otherwise due to the *Contractor* under the contract or any other contract which the *Contractor* has with the *Client* or by direct payment to the *Client*.

- Z17.1.3 For the avoidance of doubt the *Contractor* shall not be liable for any cost increases for the Statutory Authorities works defined in [identify in Scope] unless the costs result from a delay by the *Contractor* (as established in accordance with clause 25.2).
- Z17.1.4 In the event that an instruction changing the requirements of the Scope from the *Project Manager* results in the *Contractor's* design requiring additional Statutory Authorities works to those given in [identify in Scope] then the *Client* shall bear the total cost of the additional Statutory Authorities' works that result from the *Project Manager's* instruction. If an instruction from the *Project Manager* results in changes to the submitted *Contractor's* design to ensure that the *Contractor's* design complies with the Scope then the *Contractor* shall bear the total cost of the additional Statutory Authorities works that result from differences between the Scheme Drawings and the *Contractor's* design.
- Z17.1.5 The *Contractor* shall co-operate fully with any necessary audits of Statutory Authorities' invoices required by the *Client*.
- Z17.1.6 The *Contractor* shall take account of all environmental aspects, including impacts on proposed landscaping, planting and other mitigation measures ,in developing his detailed proposals for necessary diversion works. and
- Z17.1.7 The *Contractor* shall co-ordinate the Statutory Authorities' works. The *Contractor* shall be responsible for determining the levels required for the diversion, site clearance requirements, setting out requirements and access requirements.

**Z17.2** The *Contractor* shall be responsible for carrying out excavation/ backfilling trenches and installing service duct routes for the statutory authorities' works ("Attendance Work").

In no way is the *Contractor* entitled to any time consequence as a result of any delay by Statutory Authorities activities on the works. The *Contractor* is expected to accommodate the activity of all Statutory Authorities in both its programme and the Prices.

For the avoidance of all doubt, the *Contractor* is not entitled to any

- costs over and above the cost of Attendance Work, or
- time relating to any resources that become idle owing to the activities of Statutory Authorities, no matter how that idleness may arise.

## **Z18 Partial Invalidity**

If at any time any one or more of the provisions in the contract is or becomes invalid, illegal or otherwise unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of the contract shall not be in any way affected or impaired.

## **Z19 Audit**

**Z19.1** The *Contractor* agrees that it shall share cost information relating to this contract with the *Client* and/or its authorised representative(s) on an open book basis.

**Z19.2** Subject to any applicable statutory requirements the *Contractor* agrees that the *Client* and/or its authorised representative(s) shall at reasonable times be entitled to audit any records and any arrangements, agreements or processes that the *Contractor* has in place or puts into place as the result of this contract, including auditing:

**Z19.2.1** environmental procedures (certified to BS EN ISO 14000 or equivalent approved) and quality systems of the *Contractor* (certified to BS EN ISO 9001 equivalent approved);

**Z19.2.2** health and safety procedures;

**Z19.2.3** any *Contractor* records to ensure compliance with the pricing arrangements in this contract;

**Z19.2.4** any *Contractor* records to monitor compliance with technical, health, safety and procedural requirements;

**Z19.2.5** to ensure compliance with quality requirements of the *Client*;

**Z19.2.6** arrangements and agreements within the *Contractor's* supply chain including cost information and records relating to payments claimed in respect of the *Contractor's* Subcontractor and suppliers;

**Z19.2.7** compliance with requirements of the law and this contract relating to the prevention of fraud, bribery and corruption;

**Z19.2.8** compliance with requirements of this contract in relation to maintenance and storage of data; and

**Z19.2.9** the *Contractor's* design process.

**Z19.3** Where the *Client* requests that the *Contractor* provides information or otherwise permits access to information in accordance with this contract the *Contractor* shall:

**Z19.3.1** comply with such request and shall not unreasonably withhold or delay such information or access; and

**Z19.3.2** provide such access and information in a manner and format and at a location reasonably requested by the *Client*.

**Z19.4** Without prejudice to any other right the *Client* may possess, if any material non-compliance with this contract is discovered (the cost impact of which exceeds the cost of the audit) as a result of the audit the *Contractor* shall:

**Z19.4.1** pay the costs, losses or expenses incurred by the *Client* in carrying out the audit, any repeat of the audit and/or initiating enhanced audit procedures reasonably required by the *Client* in consequence of such non-compliance; and

**Z19.4.2** make changes to the relevant arrangements, agreements or processes to avoid future compliance issues occurring.

**Z19.5** The costs incurred by the *Contractor* in complying with any such requirements shall be borne by the *Contractor*

## **Z20 Nuisance and Trespass**

**Z20.1** The *Contractor* shall:

**Z20.1.1** at all times prevent any public or private nuisance (including, 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 of any adjoining or neighbouring landowner, tenant or occupier (including occupiers of completed sections of any works) or any statutory Authorities arising out of the carrying out of the *works*;

**Z20.1.2** at all times prevent the escape of any dangerous, harmful or

damaging substance on any site or from such site and, further, prevent any escape (of whatever nature) which causes any injury, damage or actionable loss;

- Z20.1.3** assist the *Client* in defending any action or proceedings which may be instituted in relation to such nuisance, interference or escape; and
- Z20.1.4** indemnify the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance, interference or escape, save and to the extent that such nuisance, interference or escape is caused by or as a result of an instruction of the *Client*.

**Z20.2** The *Contractor* shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the *works*. If the carrying out of the *works* is likely to necessitate any interference with the rights of adjoining or neighbouring owners or occupiers, the *Contractor* shall, at the request of the *Client* and at no cost to the *Client* (except as otherwise stated in the Scope), assist the *Client* in obtaining any prior written agreement of such owners and/or occupiers to such interference.

## **Z21 Special Requirements relating to Network Rail**

**Z21.1** The *Contractor* shall comply with the "Special Requirements in Relation to Network Rail" as set out in the Scope. Compliance with these Special Requirements shall not relieve the *Contractor* of any of his obligations and liabilities under the contract and fulfilment of such other obligations and liabilities shall not relieve him of his responsibility to comply with such Special Requirements.

**Z21.2** All communications between the *Contractor* and Network Rail in connection with the "Special Requirements in Relation to Network Rail" (and this Clause Z21) shall be directly between Network Rail and the *Contractor*. Network Rail, may give an instruction or approval direct to the *Contractor* and the *Contractor* may request Network Rail to provide services the cost of which is the liability to the *Client*. The *Contractor* shall then notify the *Project Manager/Supervisor* as soon as practicable and in any event within 7 days in writing of any instructions or approval received from Network Rail and request made to Network Rail.

**Z21.3** Work on or near the Railway. The *Client* shall be liable for and reimburse Network Rail any costs and charges (including costs and charges for abortive work in arranging possessions, temporary speed restrictions and isolations) properly incurred by Network Rail in imposing speed restrictions giving possessions of the track or isolations of electrical equipment providing the necessary personnel and in carrying out ancillary works. The *Client* shall also be liable to Network Rail for and defray all additional costs and charges incurred by Network Rail (certified by Network Rail's representative as such) by reason of the following:

- Z21.3.1** uneconomical use of handsignalmen lookouts and railway engineering supervisors.
- Z21.3.2** any extension of speed restrictions possessions or isolations beyond those provided in the contract (or if none were provided as previously agreed with Network Rail) or failure to take up such restrictions possessions or isolations which is due to the default of the *Contractor*;
- Z21.3.3** as a result of any other failure of the *Contractor* to comply with his obligation under the Special Requirements.

Such costs and charges as are incurred by reason of the foregoing matters (Z21.3.1 to Z21.3.3) shall be recoverable by the *Client* from the *Contractor* and shall be taken into account when assessing the amounts due to the *Contractor* under the contract.

## **Z22 Fair Payment**

**Z22.1** The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Project Manager*.

The *Contractor* includes in its contract with each Subcontractor

- (1) a period for payment of no more than 19 days after the due date in the main contract
- (2) a provision requiring the Subcontractor to include a period for payment in its Sub-subcontracts of no more than 23 days after the due date in the main contract, and
- (3) a provision requiring the Subcontractor to assess the amount due to its Subsubcontractor without taking into account the amount paid by the *Contractor*.

**Z22.2** The *Contractor* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Contractor* includes this provision in each subcontract, and requires Subcontractor to include the same provision in each sub-subcontract.

## **Z23 Contractor not an Agent**

Except where stated otherwise, the *Contractor* is not and in no circumstances shall he hold himself out as being the agent or servant of North Somerset Council, nor is the *Contractor* authorised nor shall he hold himself out as being authorised to enter into any contract on behalf of North Somerset Council or in any other way bind North Somerset Council to the performance, variation, release or discharge of any obligation.

## **Z24 Failure to Enforce Contract**

Failure at any time by the *Client* or the *Project Manager* to enforce the provisions of the contract or to require performance by the *Contractor* of any of the provisions of the contract shall not be construed as a waiver of any such provision or of any other provision and shall not in any way vitiate or invalidate the contract or any part thereof nor effect the right of the *Client* or the *Project Manager* to enforce any provision of the contract.

## **Z25 Gratuities**

Neither the *Contractor* nor any employee engaged or employed (either directly or by any Subcontractor) in the execution, construction, completion and maintenance of the *works* shall solicit or accept any gratuity, reward or charge in respect of any part of the *works* other than bona fide charges approved by the *Client*.

## **Z26 Remedies Cumulative**

The rights and benefits conferred upon the *Client* by the contract are in addition to any other rights and remedies he may have against the *Client* including, without prejudice to the generality of the foregoing, any remedies in common law.

## **Z27 North Somerset Council as regulatory authority**

North Somerset Council's role as a regulatory authority and as *Client* under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other.

Where statutory consents must be obtained from North Somerset Council in its capacity as a regulatory authority, the *Contractor* is responsible for obtaining these

and paying fees. North Somerset Council's acceptance of a tender and the *Client's* instructing or varying work does not constitute statutory approval or consent.

An action by North Somerset Council as a regulatory authority is not in its capacity as *Client* and is not a compensation event.

**Z28 Assignment**

The *Client* may assign the benefit of the Agreement to any successor body exercising its function.

**Z29 Sustainability <sup>7</sup>**

The sustainability obligations and requirements are set out in the Scope.

**Z30 Covid -19<sup>8</sup>**

The compensation event at clause 60.1(19) shall be the *Contractor's* sole remedy for events arising from or in connection with the pandemic known as coronavirus (Covid-19) including but not limited to any changes in legislation by UK Government, any change in guidance issued by UK Government, any change in construction industry guidance, and any effect, impact, or consequence on the availability and resourcing and use of People, Equipment, Plant and Materials. Where the *Contractor* notifies a compensation event that arises from or in connection with such pandemic under any other clause of this contract, the *Client* may assess the compensation event as though it had been notified under clause 60.1(20) provided that the compensation event or its effects are not attributable to the *Client's* fault. "Fault" for this purpose includes any failure on the part of the *Client* or Others to take any reasonable action to prevent or mitigate the compensation event or its effect.

**Z30 Brexit<sup>9</sup>**

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<sup>7</sup> to be confirmed with NSC

<sup>8</sup> It is hoped that at the time of execution of the Stage 2 Contract the risks associated covid-19 will be known.

<sup>9</sup> The assumption in relation to Brexit is that the position will be clearer (transition period, no deal or EU trade agreement) at contract execution and the inflation mechanism in stage 1 will deal with any pricing risk due to Brexit, if the position is not any clearer, there may have to be discussion around pricing and delay risks the contractor faces.

**Annex 3      Scope**

**[INSERT]**

DRAFT

**Annex 4      Site Information**

**[TO BE INSERTED ]**

DRAFT



**Annex 5      Activity Schedule**

**[TO BE INSERTED]**

DRAFT

DRAFT

**Annex 7      Form of *Contractor's* Consultant Warranty**

**Part A: *Contractor's* Consultant Warranty to *Client***

**Part B: *Contractor's* Consultant Warranty to Funder, Purchaser and/or Tenant**

DRAFT

**Annex 8      Form of Subcontractor Warranty**

**Part A: Subcontractor Warranty to *Client***

**Part B: Subcontractor Warranty to Funder, Purchaser and/or Tenant**

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**Annex 11 [Accepted Programme][Not Used]**

**[TO BE INSERTED, IF PREPARED]**

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