

DEED OF VARIATION

relating to works for the Design and Build of Taffs Well Depot

TRANSPORT FOR WALES

(1)

and

AMEY RAIL LIMITED

(2)

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This DEED is dated

PARTIES

- (1) **TRANSPORT FOR WALES** (company number 09476013) whose principal place of business is at 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Employer**");
- (3) **AMEY RAIL LIMITED** incorporated and registered in England and Wales with company number 02995531 whose registered office is Chancery Exchange, 10 Furnival Street, London EC4A 1AB (the "**Contractor**");

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

BACKGROUND

- (A) The *Contractor* and Keolis Amey Operations / Gweithrediadau Keolis Amey Limited (**Original Employer**) entered into a contract dated 17 December 2020 (**Building Contract**) under which the *Contractor* was appointed to carry out and complete the design and construction of works at Taff's Well depot as more particularly detailed in the Building Contract (the **Works**).
- (B) Pursuant to a transfer scheme under section 12 and schedule 2 of the Railways Act 2005, the Building Contract was transferred to Transport for Wales Rail Ltd incorporated and registered in England and Wales with company number 12619906 whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**TFWRL**").
- (C) The Parties and TFWRL agreed to novate the Building Contract from the Contractor and TFWRL to the Parties on the terms of a deed dated ...*9 March 2021*...
- (D) The Parties have agreed to amend the terms of the Building Contract as set out in this deed.

AGREED TERMS

1 TERMS DEFINED IN THE BUILDING CONTRACT

In this deed, unless otherwise stated, expressions defined in the Building Contract and used in this deed have the meaning set out in the Building Contract (as amended by this deed). The rules of interpretation set out in the Building Contract apply to this deed.

2 SETTLEMENT OF HISTORIC ENTITLEMENT

- 2.1 The Employer and the Contractor have agreed the revised Completion Date of 30/01/2023, the Fee Target of £80,361,215.07 and the revised total of the Prices of £97,423,833.76 for the provision of the whole of the Works. They have further agreed that such revised Completion Dates and the Fee Target take into account the Contractor's full entitlement to any extensions of time to the Completion Date and any adjustments to the Fee Target under or in connection with the Building Contract arising from all compensation events (as such term was defined in the Building Contract immediately prior to the date of this deed) occurring on or before the date of this deed, excluding compensation events formally notified in accordance with the Building Contract and included in the Compensation Event Register as not included in this DEED, without limitation, any default or breach by the Employer.

The matters referred to in this clause 2.1 are referred to in this deed as the "**Settled Matters**".

- 2.2 The Contractor hereby releases and agrees to release the Employer from all claims (or all rights to claim) for extension of time or an adjustment to the Fee Target arising out of or in connection with the Settled Matters under the Building Contract.

3 VARIATIONS TO AGREEMENT

- 3.1 With effect from the date of this deed, the Employer and Contractor agree to amend the Building Contract as detailed in Schedule 1 to this deed.
- 3.2 Except as set out in clause 3.1, the Building Contract shall continue in full force and effect.

4 GUARANTOR'S CONSENT TO VARIATION

The Contractor undertakes to procure written confirmation from the Guarantor in the form annexed to this deed at 0 no later than 14 days after the date of this deed.

5 GOVERNING LAW

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

6 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

7 COUNTERPARTS

- 7.1 This deed may be executed in any number of counterparts by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all counterparts shall together constitute one and the same instrument.

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

Schedule 1

Amendments to the Building Contract

1 CONDITIONS OF CONTRACT AND CONTRACT DATA

The Conditions of Contract and Contract Data shall be amended in accordance with the document annexed to this deed at Schedule 2.

2 ACTIVITY SCHEDULE

The Activity Schedule is deleted.

Schedule 2

Revised Conditions of Contract

The revised Conditions of Contract as included in Annex 1 of this deed.

Schedule 3

Form of Guarantor's consent

[On Guarantor's letterhead]

FAO [NAME AND TITLE]
Transport for Wales
3 Llys Cadwyn
Pontypridd
Wales
CF37 4TH
[DATE]

Dear Transport for Wales,

Deed of guarantee dated 28 January 2021 between (1) Amey UK PLC ("Guarantor"), (2) Keolis Amey Operations / Gweithrediadau Keolis Amey Limited ("Original Employer"), and Amey Rail Limited (the "Contractor"), transferred to Transport for Wales Rail Ltd incorporated and registered in England and Wales with company number 12619906 whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("TFWRL") pursuant to a transfer scheme under section 12 and schedule 2 of the Railways Act 2005, and subsequently novated from the Contractor, Guarantor and TFWRL to the Contractor, Guarantor and Transport for Wales ("TFW") on the terms of a deed dated 9 March 2021 (the "Guarantee")

We write with reference to the Guarantee, as defined above, and a contract entered into by the Contractor and Keolis Amey Operations / Gweithrediadau Keolis Amey Limited on 17 December 2020, which was transferred to Transport for Wales Rail Ltd incorporated and registered in England and Wales with company number 12619906 whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("TFWRL") pursuant to a transfer scheme under section 12 and schedule 2 of the Railways Act 2005, and subsequently novated from the Contractor and TFWRL to the Contractor and Transport for Wales ("TFW") on the terms of a deed dated 9 March 2021 (the "Building Contract"), under which the Contractor was appointed to carry out and complete the design and construction of works at Taff's Well depot as more particularly detailed in the Building Contract (the "Works").

We hereby:

- 1 acknowledge that, around the date of this letter, the Contractor and TFW entered into a deed of variation to the Building Contract, a copy of which we have been provided with (the "Deed of Variation"); and
- 2 confirm that our guarantee and other obligations under the Guarantee remain fully effective and apply to the Building Contract as varied by the Deed of Variation and are not released or diminished by any provision of the Deed of Variation.

Yours faithfully,

for and on behalf of [NAME OF GUARANTOR]

Name:

Date:

IN WITNESS WHEREOF the Parties have executed this contract as a deed the day and year first before written

Executed as a deed by **TRANSPORT FOR WALES**

acting by ~~two directors~~ a director

James Price and *is the presence of:*

~~Heather Clash~~

WITNESS SIGNATURE: 

NAME: **DAN TIPPER**

ADDRESS: **Coppice Cottage, Whitehall Lane, Rudford**

OCCUPATION: **Infrastructure Director**



James Price

Director

~~Heather Clash~~

~~Director~~

Executed as deed by **AMEY RAIL LIMITED**

acting by a director and its secretary or by two directors

JAMES HOLMES.....a director, and

KEITH BENNETT.....



Director

Keith Bennett

Director OR Secretary

Annex 1

Date:

Contract

relating to

Works

For The Design and Build of Taffs Well Depot

EXPLANATORY NOTES

1. The Conditions of Contract set out in these documents are based on the NEC3 ECC Conditions of Contract, the copyright of which belongs to the Institution of Civil Engineers and has been amended as set out herein. The terms of these Conditions of Contract may not be reproduced, stored in a retrieval system or transmitted by any means without the prior written consent of the *Employer*, save in relation to the administration of this contract.
2. The definitions used within the Conditions of Contract are not NEC standard and have been amended to reflect those used in the OLR Grant Agreement to provide uniformity across the suite of the Welsh Ministers' and Transport for Wales' contracting arrangements. Bespoke clauses have generally been added to the end of each section and we have sought to ensure that clause numbering reflects the standard NEC position so far as possible. Further bespoke clauses are found at section 10: Additional Conditions of Contract.
3. There is an overriding obligation on the *Contractor* to create local employment and importation expenses will only be paid where such skills are not available locally or where there is another reason approved by the *Employer*.

FORM OF AGREEMENT FOR WORKS

THIS CONTRACT IS MADE AS A DEED AND IS DATED

BETWEEN:

- (1) **Transport For Wales** (company number 09476013) whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Employer**", which term includes its successors in the exercise of its statutory functions, successors in title and permitted assignees) and
- (2) **Amey Rail Limited** incorporated and registered in England and Wales with company number 02995531 whose registered office is at Chancery Exchange, 10 Furnival Street, London EC4A 1AB (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

This contract relates to works to be undertaken by the *Contractor* for the *Employer* in respect of the following project (subject to any variations in accordance with this contract):

Design and build of the Taffs Well Depot

(referred to below as the "**Project**").

IT IS AGREED as follows:

1 This contract incorporates:

1.1 the Definitions as set out in Appendix 1 to this contract;

the conditions of contract are based on the Institution of Civil Engineers' NEC Engineering and Construction Contract (third edition reprinted with amendments April 2013) as set out in Appendix 2 to this contract with annexures as listed below:

- 1.1.1 Annex 1 - Contract Data Part One (including relevant documents uploaded to the USB referenced TWD29),
- 1.1.2 Annex 2 – Contract Data Part Two,
- 1.1.3 Annex 3 - Works Information (including relevant documents uploaded to the USB reference TWD29),
- 1.1.4 Annex 4 – Activity Schedule,
- 1.1.5 Annex 5 – CV's of Contractor's Key People,

- 1.1.6 Annex 6 – Site Information (including relevant documents uploaded to the USB referenced TWD29).
- 1.1.7 Annex 7 – Key Subcontractors.
- 1.2 The Novation Agreement as set out in Appendix 3 to this contract;
- 1.3 the *Contractor* warranty as set out in Appendix 4 to this contract;
- 1.4 the Key Subcontractor warranty as set out in Appendix 5 to this contract;
- 1.5 the **Dispute Resolution procedure** as set out in Appendix 6 to this contract;
- 1.6 **Draft trust Deed for Project Bank Account as set out in Appendix 7 to this contract;**
- 1.7 **Draft joining Deed for Project Bank Account as set out in Appendix 8 to this contract; and**
- 1.8 **Draft form of Parent Company Guarantee as set out in Appendix 9 to this contract; and**
- 1.9 **List of Key Equipment as set out at Appendix 10 to this contract.**
- 2 The *Employer* will pay the *Contractor* the amount due in accordance with this contract.
- 3 This contract supersedes any previous agreement between the Parties in relation to the Project and / or the Works.
- 4 The terms of this contract may only be varied by an express written agreement to that effect executed as a Deed by the *Employer* and the *Contractor*. No waiver, estoppel, acceptance, or other ground on which the *Employer* or the *Contractor* may be said to have lost its right to insist on its strict rights under this contract, shall have such effect unless expressly so executed as a variation to this contract as stated above.

IN WITNESS WHEREOF the Parties have executed this contract as a **DEED** the day and year first before written

Signed as a Deed by **TRANSPORT FOR WALES** acting by one director in the presence of a witness:

Signature of Director

Name and Role

Signature of Director

Name and Role

Signed as a Deed by **Amey Rail Limited** acting by two directors:

Signature of Director

Name and Role

Signature of Director

Name and Role

Appendix 1

DEFINED TERMS

These defined terms apply to the Conditions of Contract. Words in *Italics* within the Conditions of Contract are defined within the Contract Data.

Accepted Programme	the programme identified in the Contract Data or the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes.
Act or The Act	<p>the Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.</p> <p>A period of time stated in days is a period calculated in accordance with Section 116 of the Act.</p>
Adjudicator	has the meaning given to it in Appendix 6.
Allowable Training	means safety training including mandatory qualifications required for a safe system of working to be undertaken or for the maintenance of existing competencies and excludes all other training including, without limitation, the provision of and time spent undertaking IT courses.
Apprentice	a formal arrangement between a person aged sixteen (16) or over to earn a wage and work alongside experienced staff to gain job specific skills through a recognised and approved apprenticeship scheme.
Apprentice Rate	the national minimum wage rate as applicable to Apprentices.
Associated Project	any project for building works, refurbishment, repair, alterations, additional facilities, fitting out, mechanical, electrical or other installations and any associated works related to the CVL Transformation and / or the South Wales Metro or any other project called off under the terms of a framework agreement entered into by InfraCo pursuant to

	the terms of the Infrastructure Agreement or called off by the Employer.
Assurance Plan	<p>the plans which:</p> <ul style="list-style-type: none"> (a) define <i>the Contractor's</i> organisational arrangements, roles and responsibilities in respect of provision of assurance regarding the Works; (b) define <i>the Contractor's</i> assurance milestones; and (c) define <i>the Contractor's</i> proposals for providing evidence of assurance to the <i>Employer</i> at each assurance milestone by way of tests, demonstrations or otherwise.
Assurance Regime	the assurance regime agreed between the Parties as set out in the Works Information and as amended from time to time.
Authorisation	is a document authorising the <i>project bank</i> to make payments to the <i>Contractor</i> and Named Suppliers.
Available	<ul style="list-style-type: none"> (a) the Works are safe; (b) there are no reasonably foreseeable hazards to the use of the Works except insofar as a risk assessment has been carried out and any risk has been expressly accepted by the <i>Employer</i>; the Works are readily accessible and operable by the <i>Employer</i>, the <i>Contractor</i>, <i>InfraCo</i>, <i>TWRL</i>, and other operators.
Background IPR	in respect of each Party the IPR owned by or otherwise in the possession of that Party at the Contract Date.
BAME	Black, Asian and Minority Ethnic.
Beneficiary	any third parties with an interest in the Works who require rights from the <i>Contractor</i> and / or a Subcontractor.
BES 6001 Responsible Sourcing of Construction Products	the British standard concerning "Responsible Sourcing of Construction Products".
British Standards	those standards produced by the British Standard Institution of 389 Chiswick High Road, London, United Kingdom.

Business Wales	the Welsh Government's service, which supports the sustainable growth of SMEs across the country by offering access to information, guidance and business support.
CDM Regulations	are the Construction (Design and Management) Regulations 2015 and the related guidance together with any requirements issued from time to time by the Health and Safety Executive and the ORR.
Change of Control	the <i>Contractor</i> ceasing to be a group company of Amey UK plc without the Employer's prior consent (which consent shall not be unreasonably withheld or delayed).
Code of Construction Practice	the code of construction practice as appended to the Works Information.
Compensation Event Register	The register of compensation events, included in Annex 2 of contract data part 2, outlining notified compensation events and whether an assessment of their impact on time or cost has been included in this contract at the DOV Date. Any items agreed not included, will be assessed in accordance with the Conditions of Contract. The Contractor has no further entitlement to any compensation events agreed to be included.
Completion	occurs when the <i>Contractor</i> has: <ul style="list-style-type: none"> (a) done all the work and completed all tests which the Works Information states it is to do or complete by the Completion Date; (b) corrected all notified or patent Defects except Snagging Defects; and (c) done all the work necessary for the Works to be Available.
Completion Date	is the <i>completion date</i> or any sectional completion dates unless later changed in accordance with the Conditions of Contract.

Conditions of Contract	the terms and conditions set out in this Appendix 2 to the contract.
Connected Person	all and any of the <i>Contractor's</i> employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisors (including lawyers, auditors, financial advisors, accountants and technical contractors) or underwriters.
Consents	the consents, approvals and licences listed in the Works Information to be provided by the <i>Contractor</i> including the Employer Consents.
Construction Demolition Sector Plan	the Construction and Demolition Sector Plan dated November 2012.
Construction Industry Scheme	the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005 as amended.
Construction Wales Innovation Centre	the CITB funded training centre based within the University of Wales Trinity St David.
Consultant	a professional consultant appointed by the <i>Contractor</i> to undertake part of the Works.
Consultant Warranty	a form of collateral warranty provided by the Consultant in accordance with clause 102.1 and includes a warranty provided from a sub-consultant.
Contract Data	the contract data set out at Annexes 1 and 2 to these Conditions of Contract.
Contract Date	the date of the contract.
Contract Warning Notice	a notice issues to the Contractor by the employer in accordance with clause 95.1 of the Conditions of Contract.

Core Valley Lines or CVL

means the railway network known as the Cardiff Core Valley Lines of which the CVL IM is the Infrastructure Manager, as more particularly defined in Part A of the CVL Network Code.

Critical Defect

a Defect which appears on or before the *defects date* for the Works and which is:

- (a) critical to the operation and safety of the network; or
- (b) within a category of Defects identified in the Works Information as a Critical Defect; or
- (c) deemed by the *Employer* (acting reasonably) to be critical in all the circumstances.

CVL Assets

any assets contained within the CVL Physical System.

CVL Physical System

- (d) the civils including the bridges (rail / road / foot), viaducts and subways, tunnels, earthworks, track drainage, boundary fencing – lineside, at stations, depot & maintenance access;
- (e) the land;
- (f) the stations and stops;
- (g) the track and alignment;
- (h) the vehicle control and signalling;
- (i) the vehicles;
- (j) the highways and parking;
- (k) the traction supply and overhead line systems;
- (l) systems integration; and
- (m) data communications network,

which are within or form part of the CVL.

CVL Rail Services

the rail services on the Core Valley Lines.

CVL Transformation

the transformation of the CVL Physical System to support enhanced passenger services.

Defect

a part of the Works which fails to comply with the Conditions of Contract, the Works Information, Standards and/or Legislation and any physical damage to the Works caused by such failure.

Defects Certificate

is either a list of Defects that the *Project Manager* or the Supervisor or the *Contractor* has notified before the *defects date* for the Works which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

Defined Cost

is:

- (a) the amount of payments due to Subcontractors for work which is subcontracted without taking into account amounts deducted for:
 - (i) retention;
 - (ii) not used
 - (iii) the correction of Defects after Completion;
 - (iv) payments to Others; and
 - (v) the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract; and
- (b) the cost of components in the Schedule of Cost Components for other work,

less Disallowed Cost.

Deleterious Materials

any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

- (a) Section 2 of the British Council for Offices / British Property Federation report entitled "Good Practice in

the Selection of Construction Materials" (current at the time of specification, authorisation or use);

- (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice;
- (c) any publications of the Building Research Establishment related to the specification of products or materials; or
- (d) the Standards (if the Standards are applicable to the Works), all applicable law, Statutory Requirements, the Sustainable Development Plan and the instructions of the *Employer*.

Design

the design undertaken by the *Contractor* as part of the Works as more particularly set out in the Works Information.

Detailed Design

the detailed design undertaken or to be undertaken by the *Contractor*.

Disallowed Cost

cost which the *Project Manager* decides:

- (a) is not justified by the *Contractor's* accounts and records;
- (b) should not have been paid to a Subcontractor or Supplier in accordance with the subcontract or supply contract;
- (c) was incurred because the *Contractor* did not:
 - (i) comply with the Works Information; or
 - (ii) give an early warning which this contract required it to give;
- (d) the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract;
- (e) results from paying a Subcontractor more for a compensation event than is included in the quotation or

assessment for the compensation event accepted by the *Project Manager*;

- (f) is due under a subcontract entered into in breach of clause 26 of the Conditions of Contract;

and the cost:

- (g) of correcting Defects after Completion except for Snagging Defects provided they are rectified in accordance with clauses 43 and 46;
- (h) of correcting Defects caused by the *Contractor* not complying with a constraint on how he is to Provide the Works stated in the Works Information or an agreed method statement;
- (i) of Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information;
- (j) of 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;
- (k) of preparation for and conduct of an adjudication or proceedings of the courts (save where such costs are properly and reasonably incurred by the *Contractor* in connection with the Works which the *Contractor* is required to provide pursuant to this contract and shall not, for the avoidance of doubt, include the cost of defending or bringing any claim against the *Employer* pursuant to or in connection with this contract or due to any default, act or omission of the *Contractor*);
- (l) of correcting Defects caused by the *Contractor's* failure to exercise the Required Standard in the design of the Works or any part thereof
- (m) of correcting Defects caused by the *Contractor's* failure to comply with a procedure set out in the Quality Plan;

- (n) of fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement;
- (o) cost incurred by the *Contractor* for any recruitment professionals or advertising the role through providing a replacement person as described in clause 24 of the Conditions of Contract;
- (p) of strikes, riots and civil commotion confined to the *Contractor's* employees and / or any Subcontractor's employees;
- (q) of Plant and Materials which are outside the Working Areas;
- (r) of Equipment 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;
- (s) of carrying out repairs due to the provision of Equipment which is not able to carry out the function for which it is to be used;
- (t) of providing training to any Connected Persons or Others other than the Allowable Training.

Documentation

all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and / or other material produced or supplied by or on behalf of the *Contractor* in the performance of this contract in hard copy and electronic form including all updates, upgrades and modifications of the same.

DOV Date

the date the deed of variation was entered into by the parties varying the terms of this contract which was originally entered into on 17 December 2020, was then subject to a transfer scheme under section 12 and schedule 2 of the Railways Act 2005, by which the contract was transferred to Transport for Wales Rail Ltd incorporated and registered in

England and Wales with company number 12619906 whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH ("TFWRL"), and then novated from the Contractor and TFWRL to the current parties on the terms of a deed dated _____.

Early Works Agreement

Works undertaken pre 17/12/2020, the value of this work is agreed at the DOV Date as £5,922,648.67 and includes fee. This value will be included in the Prices and in the assessment of the Price for Work Done to Date but will be excluded from the Fee Target.

Employer Consents

the planning permission for the Works and any other Consent which the Works Information states that the Employer is to obtain.

Employer's IPR

has the meaning given to it in clause 74.2.

Environmental Management Plan

the plan referred to in clause 162.4.

Equipment

items provided by the *Contractor* and used by it to Provide the Works and which the Works Information does not require the *Contractor* to include in the Works.

European Standards

those standards ratified by the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) both of Avenue Marnix 17, B-1000 Brussels, Belgium or the European Telecommunications Standards Institute (ETSI) of 650, Route des Lucioles, Sophia-Antipolis, 06560, Valbonne France.

Fee

is the sum calculated by applying the fee percentage to the Fee Target.

Fee Instalment

means the instalments of the Fee payable to the Contractor being 12 number equal instalments of £928,330.84 as may be adjusted in accordance with provisions of this contract payable on a monthly basis from the DOV Date with the first instalment to be included in the Price for Work Done to Date at the first assessment date after the DOV Date, subsequent instalments to be included in the Price for Work Done to Date

	<p>in respect of subsequent instalments and the final instalment to be included in the Contractor's application for payment following the Completion of the whole of the Works, such instalment being the sum calculated by deducting the aggregate of the Fee Instalments previously paid to the Contractor from the final adjusted Fee.</p>
Fee Target	<p>the forecast of the Defined Cost for the whole of the Works of £80,361,215.07 as at the DOV Date as may be adjusted in accordance with clauses 60 to 65 inclusive and clause 105, excluding the Early Works Agreement and associated value.</p>
FOI Legislation	<p>the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance issued by the Information Commissioner in relation to such legislation.</p>
Foreground IPR	<p>all IPR developed by or created for the <i>Employer</i> or any contractor of the <i>Employer</i>, the <i>Contractor</i>, and any Subcontractor whether before or after the Contract Date to the extent that such IPR is developed or created for the purposes of the <i>Employer</i> or the <i>Contractor</i> enjoying the rights granted by this contract and / or performing their respective obligations under this contract.</p>
Future Generations Act	<p>the Well-being of Future Generations (Wales) Act 2015.</p>
GDPR	<p>the General Data Protection Regulation ((EU) 2016 / 679) unless and until the GDPR is no longer directly applicable in the UK, and any national implementing laws, regulations and secondary legislation as amended or updated from time to time, in the UK and then any successor legislation to the GDPR or the Data Protection Act 1998.</p>
Green Growth Wales Paper	<p>the Welsh Government Prospectus for Green Growth Wales.</p>
Indirect Loss	<p>any loss of profit, loss of use, loss of production, loss of business, loss of business opportunity or any indirect or consequential loss of any nature.</p>

Information Request	a request for information under the FOI Legislation.
InfraCo	means AMEY INFRASTRUCTURE WALES/ SEILWAITH AMEY CYMRU (Company Number: 11389544), whose registered office is at Transport for Wales CVL Infrastructure Depot Ty Trafnidlaeth, Treforest Industrial Estate, Gwent Road, Pontypridd, United Kingdom, CF37 5UT.
InfraCo Services	means the services being provided under the Infrastructure Agreement including Infrastructure Services, AIW Infrastructure Works and Infrastructure Manager Services as amended from time to time.
Infrastructure Agreement	means the InfraCo Sub-Contract as amended and novated by the Deed of Novation and Amendment dated 22 December 2020 which came into effect on 7 February 2021 between Transport for Wales and InfraCo as varied from time to time.
Infrastructure Manager	has the definition as set out in the Railway (Access, Management and Licensing of Railway Undertakings) Regulations 2016.
Initial total of the Prices	has the meaning give to it in the Contract Data Part 2.
Insolvency	<p>the occurrence of any of the following:</p> <p>(a) Administration: any step being taken by a person with a view to the appointment of an administrator to the <i>Contractor</i>;</p> <p>(b) Insolvency: the <i>Contractor</i> stopping or suspending or threatening to stop or suspend payment of all or, in reasonable opinion of the <i>Employer</i>, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1) (e) and sub-section (2) of Section 123 shall be deemed to be deleted;</p>

- (c) **Arrangements with Creditors:** the directors of the *Contractor* making any proposal under Section 1 of the Insolvency Act 1986, or the *Contractor* proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of the creditors) of all or, in the reasonable opinion of the *Employer*, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the *Employer*, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the *Contractor* or the whole or a substantial part of the assets or undertaking of the *Contractor*, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business / Winding-Up:** any step being taken by the *Contractor* with a view to its winding-up or any person presenting a winding-up petition or any of the *Contractor* ceasing or threatening to cease to carry on all or, in the reasonable opinion of the *Employer*, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the *Employer* before that step is taken;
- (f) **Railway Administration Order:** a railway administration order being made in relation to the *Contractor* under Sections 60 to 62 of the Act; and

Analogous Events: any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this definition of Insolvency.

Insurance Table

- (a) the table at clause 85.

Intellectual Property Rights or IPR	all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.
International Labour Organisation	the International Labour Organisation, an agency of the United Nations.
International Standards	those Standards produced by the International Standards Organisation (ISO) 1, ch. De la Voie-Creuse, CP 56, CH-1211 Geneva 20 Switzerland or the International Electrotechnical Commission (EC) of 3 Rue de Varembe, PO Box 131, CH1211, Geneva 20, Switzerland.
Key Subcontractor	means those subcontractors listed in Annex 7.
Joining Deed	is an agreement in the form set out in Appendix 8 to this contract under which the Contractor joins the Trust Deed.
Key Equipment	the equipment specified as such in Appendix 10 to this contract.
Legislation	(a) any applicable statute (including any Act or Measure of the National Assembly for Wales), proclamation, or any delegated or subordinate legislation;

	<p>(b) any enforceable Community Right within the meaning of section 2(1) of the European Communities Act 1972;</p> <p>(c) any applicable guidance, direction or determination with which a Party is bound to comply; and</p> <p>(d) any applicable judgment or decision of a court of competent jurisdiction which is a binding precedent,</p> <p>in each case in force in England and Wales, or in Wales only.</p>
Living Wage	an hourly rate which is calculated independently (and updated annually) by the Living Wage Foundation according to the basic cost of living in the United Kingdom.
Local Suppliers	a supplier of goods or services operating or based within Wales or the area served by the InfraCo Services and TfWRL Services.
Losses	all costs (including legal costs and costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss, damages, claims, demands, and compensation, which must be legally enforceable and properly mitigated against.
Named Suppliers	are named suppliers defined in the Contract Data and other Suppliers who have signed the Joining Deed.
Natura 2000	any Special Area of Conservation (" SAC ") as defined under the Conservation (Natural Habitats &c.) Regulations 1994 and the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007, and any Special Protection Area (" SPA ") as defined under the EC Birds Directive (EC Directive 2009 / 147 / EC) and any other site afforded the same protection as SACs and SPAs by the Welsh Ministers.
Network Rail	<p>in respect of;</p> <p>(a) the network or any relevant facility:</p> <p>(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and</p>

	(ii) any successor in title to the network or any relevant railway facility; or
	any new or other sections of network or any relevant new or other railway facilities, the owner (if different).
Network Rail's Network	(a) the network which Network Rail operates pursuant to the network licence granted by the Secretary of State pursuant to section 8 of the Railways Act 1993.
Nominating Authority	Technology and Construction Solicitors' Association (TeCSA).
Notice of Adjudication	has the meaning given to it in Appendix 6 to this contract.
ODP	is the former Operator and Development Partner appointed by the Welsh Ministers under the ODP Grant Agreement which terminated on 7 February 2021
ODP Grant Agreement	the ODP Grant Agreement between the Welsh Ministers and the ODP dated 4 June 2018 which terminated on 7 February 2021
ODP Services	the former services provided by the ODP pursuant to the terminated ODP Grant Agreement.
OLR Grant Agreement	means the OLR Grant Agreement dated 5 February 2021 between The Welsh Ministers and TfWRL.
OpCo Sub-Contract	means the expired subcontract between the ODP and OpCo dated 4 June 2018 pursuant to which OpCo agreed to provide the ODP Services.
Open Document Format	the IT format specified in the Contract Data for collaboration and the sharing of document.
Operator	is a body operating the Rail Services.
ORR	Office of Rail and Road.
Others	people or organisations who are not the <i>Employer</i> , the <i>Contractor</i> , the Adjudicator, or any employee, Subcontractor or supplier of the <i>Contractor</i> .

PAR Process	the version of the CVL Transformation Proceed at Risk Process current as at the Contract Date as may be amended from time to time with the prior written approval of Transport for Wales.
Pay Less Notice	has the meaning given to it in clause 51.8.
Person-week	the equivalent of one person working a minimum of thirty (30) hours per week (where the post involves working less than thirty (30) hours per week (subject to a minimum of sixteen (16) hours per week) then the hours worked may be divided by thirty (30) to give the proportion of a Person-week provided).
Personal Data	has the same meaning as in the Data Protection Act 1998 and includes Sensitive Personal Data as defined therein.
Plant and Materials	are Items intended to be included in the Works (as applicable).
Polluter Pays Principle	the principle according to which the polluter should pay for measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution.
Premises	the premises defined in the Works Information.
Price for Work Done to Date	the total Defined Cost which the Project Manager forecasts will have been paid by the Contractor before the next assessment date plus any applicable Fee Instalments.
Prices	means the forecast of the total Defined Cost for the whole of the Works plus the Fee, inclusive of the Early Works Agreement.
Principal Contractor	has the meaning given to it in the CDM Regulations.
Principal Designer	has the meaning given to it in the CDM Regulations.
Prohibited Act	<p>(a) offering, giving or agreeing to give to any officer or agent of the <i>Employer</i>, any gift or consideration of any kind:</p> <p>(i) as an inducement or reward; or</p>

(ii) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or

(iii) for showing or not showing favour or disfavour for any person in relation to this contract or any other contract with the *Employer*; or

(iv) for entering into this contract in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge unless before this contract is made, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the *Employer*; or

(b) the commission of an offence under the Prevention of Corruption Acts 1889 – 1916 or the Bribery Act 2010; or

(c) entering into any form of collusion with other suppliers of services similar to the services or with other actual or potential bidders for this contract; or

defrauding or attempting to defraud the *Employer*.

Project

(a) is the design and construction of the Taffs Well Depot.

Project Bank Account

is the account used to receive payments from the Employer and the Contractor and make payments to the Contractor and Named Suppliers.

Provide the Works

to do the work necessary to complete the Works in accordance with this contract.

Qualifications Wales

the regulator of non-degree qualifications and the qualifications systems in Wales established by the Qualifications Wales Act 2015.

Quality Plan

the plan to be provided in accordance with Clause 27.32.

Rail Services

passenger or freight rail services.

Ready For Energisation

For the purposes of defining Completion, in the scenario where 25KV power has not been provided to the depot but Others. Provision of the following is required for the Contractor to prove the OLE works are suitably complete and for the Project Manager to certify Completion;

- ITP and QA check sheets complete.
- Certificate of Conformity for materials.
- Form E.
- Form 5 for Civil installation.
- Continuity tests for Earthing.
- Connection to Switching compound.
- 25kv Soak Test complete if third parties are ready.
- Mechanical load test/by inspection/by design confirmation.

Required Standard

In respect of the Works, the degree of skill, care, diligence, experience, prudence and foresight to be expected of a skilled, professionally qualified, experienced and competent professional contractor and rail infrastructure provider engaged in activities of a similar nature, scope, value and complexity to the Works and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all applicable laws and Statutory Requirements.

a register of:

- (a) the risks specific to the Works which are listed in the Contract Data; and
- (b) the risks specific to the Works which the *Employer*, the *Contractor*, *Project Manager*, the *InfraCo* or *Others* have notified as an early warning matter; and

includes a description of the risk and a description of the actions which are to be taken or avoided to reduce the risk.

The Risk Register is deemed to include any other risks (not specific to the Works) which are referred to in the Risk Management Plan.

Risk Management Plan	the agreed plan setting out the arrangements to be made and / or taken by the <i>Contractor</i> to identify, record, monitor, mitigate, control and assess risks for the period of the contract as set out in the Works Information.
RSSB	the Rail Safety and Standards Board.
Safety Breach	a material breach of the contract caused by the gross incompetence or wilful default of the <i>Contractor</i> or any Subcontractor (or anyone employed or acting on behalf of the <i>Contractor</i> or any Subcontractor) or any of its agents which has materially affected the safe operation of Network Rail's Network or the CVL Assets or the CVL Physical System or the CVL Transformation or Associated Projects or the safety of any person.
Schedule of Cost Components	can be found at Annex 4 to these Conditions of Contract.
Sell2Wales	the Sell2Wales information and procurement portal set up by the Welsh Government.
Senior Representatives	a representative of a Party at a director level. In the case of TfW the director shall be as appointed by the Chief Executive from time to time.
Site	the area within the boundaries of the site and the volumes above and below it which are affected by work included in this contract.
Site Information	information which: (a) describes the Site and its surroundings: and is in the documents which the Contract Data states it is in.
SME	(a) an organisation defined as a Small or Medium Size Enterprise in accordance with Commission Recommendation (2003 / 361 / EC) of 6 May 2003.
Snagging Defects	means any Defects which (1) do not compromise the health and safety of persons entering and/or occupying the built assets and/or (2) given their cumulative number and/or

	nature, do not prevent the Employer from using the Works as intended and Others from doing their work.
South Wales Metro	the project to create a new transport system in South East Wales centred around Cardiff and including the Core Valley Lines to provide faster, more frequent and joined-up trains, buses and light rail services.
Specification of Apprenticeship Standards for Wales	the standards for apprenticeship published from time to time by the Welsh Government.
Standards	the individual requirements contained within standards documents and codes of practice issued to the <i>Contractor</i> by the <i>Employer</i> and / or specified in the Works Information and / or referred to in the Conditions of Contract.
Statutory Requirement	any laws, statutes, by-laws, codes, common law or other laws or legislation made by a competent authority and all subordinate legislation, rules, regulations, ordinances, orders, notices, directives, franchises, guidance notes and circulars promulgated pursuant to the same (to the same legally effective).
Statutory Undertakers	<p>any governmental or local authority or statutory undertaker:</p> <ul style="list-style-type: none"> (a) which has any jurisdiction with regard to the Works including without limitation any jurisdiction to control development of the Site or any part of it; (b) with whose requirements which relate to the Works the <i>Employer</i> is obliged to comply; or <p>with whose systems and / or utilities the Works will be associated.</p>
Subcontractor	<p>a person or organisation who has a contract with the <i>Contractor</i> to either:</p> <ul style="list-style-type: none"> (a) construct or install part of the Works; or (b) provide a service necessary to Provide the Works; or

(c) supply plant or materials which the person or organisation has wholly or partly designed specifically for the Works

(d) for the avoidance of doubt Subcontractor includes a subconsultant where appropriate.

Supplier

is a person or organisation who has a contract to:

(a) provide part of the Works;

provide a service necessary to Provide the Works.

Sustainable Development Manager

(a) the role described at clause 156.2.

Sustainable Development Plan

the plan to be produced by the *Contractor* which:

(a) details how the *Contractor* will deliver the Works in accordance with the objectives of the:

(i) Well-being of Future Generations (Wales) Act 2015;

(ii) Environment (Wales) Act 2016;

(iii) Active Travel (Wales) Act 2013; and

(iv) Modern Slavery Act 2015.

(b) describes how the *Contractor* will address, as a minimum the requirements relating to the:

(i) Welsh Government's Innovation Strategy;

(ii) Environmental Management Plan;

(iii) Waste Management Plan; and

(iv) Welsh Government's Ethical Employment in Supply Chain Code of Practice.

(c) specifies any plans of the *Contractor* to provide further benefits in any of the following areas in providing the Works:

- (i) social;
- (ii) economic and ethical procurement;
- (iii) environmental;
- (iv) cultural and language; or
- (v) additional community benefits.

For each of the above areas, the *Contractor* will specify the benefits to be achieved by the activities described and any identified risks associated with the activities.

TeCSA Adjudication Rules

the Technology and Construction Solicitors' Association Adjudication Rules 2002 Version 3.2 or such later version as is current at the time of the referral to the adjudicator.

TfWRL

means TRANSPORT FOR WALES RAIL LTD (Company Number:12619906), whose registered office is at 3 Llys Cadwyn, Pontypridd, Wales CF37 4TH.

TfWRL Services

means the Rail Services being provided by TfWRL under the OLR Grant Agreement which includes CVL Rail Services and the Wales and Cross-Border Lines Services.

Transport for Wales or TFW

Transport for Wales Limited, a company incorporated and registered in England and Wales with company number 09476013 whose registered office is currently at 3 Llys Cadwyn, Pontypridd, Rhondda Cynon Taf, CF37 4TH and any successor to it in the exercise of its functions.

Third Party Background IPR

all IPR other than Foreground IPR which is or becomes owned by third parties or Subcontractors which is required for the full performance of this contract including that which the *Employer* needs to use in order for the *Employer* to enjoy the rights granted to it under or pursuant to this contract.

Trust Deed

is an agreement in the form set out in Appendix 7 of this contract which contains provisions for administering the Project Bank Account.

Third Sector Enterprises or TSEs	are for-profit or not-for-profit businesses trading for social or environmental purposes.
Towards Zero Waste Strategy	Wales' overarching waste strategy document available dated 1 February 2016.
Variation	any change to the Works Information or the Works or any part thereof which (in each case) constitutes or is instructed or approved or accepted as a variation pursuant to Appendix 7 of this contract.
Wales and Cross Border Rail Services	<p>the rail services on the following routes:</p> <ul style="list-style-type: none"> (a) Crewe to Chester; (b) Chester to Llandudno Junction; (c) Llandudno Junction to Bangor; (d) Bangor to Holyhead; (e) Llandudno Junction to Llandudno; (f) Llandudno and Llandudno Junction to Blaenau Ffestiniog; (g) Crewe and Chester to Bangor and Holyhead; (h) Wrexham to Bidston; (i) Manchester Airport / Manchester to Chester via Warrington Bank Quay; (j) Shrewsbury to Chester; (k) Shrewsbury to Aberystwyth; (l) Machynlleth to Pwllheli; (m) Birmingham International and Birmingham New Street to Shrewsbury; (n) Barry Island to Cardiff Central; (o) Bridgend to Barry via Llantwit Major;

- (p) Ebbw Vale Town to Cardiff Central;
 - (q) Ebbw Vale Town to Newport;
 - (r) Swansea to Pembroke Dock;
 - (s) Gowerton Local Service (Swansea to Llanelli);
 - (t) Kidwelly and Ferryside Local Service (Swansea to Carmarthen);
 - (u) Cardiff Central to Carmarthen via Swansea;
 - (v) Cardiff Central and Carmarthen to Milford Haven;
 - (w) Carmarthen to Fishguard Harbour;
 - (x) Bridgend to Swansea;
 - (y) Cardiff Central to Maesteg;
 - (z) Shrewsbury to Llanelli and Swansea;
 - (aa) Cardiff Central to Crewe and Manchester;
 - (bb) Cardiff Central to Hereford;
 - (cc) Hereford to Shrewsbury;
 - (dd) Shrewsbury to Crewe;
 - (ee) Cardiff Central to Holyhead
 - (ff) Cardiff to Gloucester;
 - (gg) Cardiff to Cheltenham Spa;
 - (hh) Cardiff to Penarth; and
- Cardiff to Radyr via Fairwater.

Waste Management Plan

(a) has the meaning set out at set out at clause 163.

Welsh Government's Code of Practice for Ethical Employment in Supply Chains

the code of practice established by the Welsh Government to support the development of more ethical supply chains to

deliver contracts for the Welsh public sector and third sector organisations in receipt of public funds.

Working Areas

are those parts of the *working areas* which are

(a) necessary for Providing the Works; and

(b) used only for work in this contract,

unless later changed in accordance with this contract.

For the avoidance of doubt – the *Contractor's* head office is not part of the Working Areas however the People costs only as it is defined in the Schedule of Cost Components of persons working on the Works that are working remotely are recoverable as Defined Cost as if they were working within the Working Areas.

Working Day

a day other than a Saturday or Sunday, or a public holiday in Wales.

Works

the works described in the Works Information as the same may be amended in accordance with the contract.

Works Delivery Plan

the initial plan for the Works set out in Annex 5 to these Conditions of Contract or such subsequent detailed works plan as shall have been prepared by the *Contractor* and agreed by the *Employer* in accordance with the Works Information.

Works Director

is the *key person* identified in the Contract Data.

Works Information

the information which describes the Works and forms part of these Conditions of Contract as set out in Annex 3 to these Conditions of Contract.

Appendix 2

Conditions of Contract

CONTENTS

CORE CLAUSES

- 1 General
- 2 The Parties' Main Responsibilities
- 3 Time
- 4 Quality, Testing and Defects
- 5 Payment
- 6 Compensation Events
- 7 Rights to Material
- 8 Indemnity, Insurance and Liability
- 9 Disputes and Termination
- 10 Additional Conditions of Contract

CORE CLAUSES

1 GENERAL

10 Actions

- 10.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* shall act as stated in this contract and in a spirit of mutual trust and cooperation. The *Employer* and the *Contractor* work together in a collaborative manner acting in good faith to achieve successful delivery of the Works consistent with an economic and efficient whole-life cost approach and in a way which offers best value for money for the *Employer*.
- 10.2 The *Contractor* shall at all times perform its obligations in such a way so as to minimise and mitigate the impact upon the Rail Services.

11 Identified and Defined Terms

- 11.1 In these Conditions of Contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.2 No alteration or amendments for which this contract does not otherwise make provision may be made to this contract except where expressly recorded in writing by a document expressed to be supplemental to this contract and signed by the Parties.
- 11.3 The defined terms are set out in Appendix 1 unless expressly stated otherwise.
- 11.4 Not used
- 11.5 Not used
- 11.6 References to "the contract" or "this contract" in these Conditions of Contract for the provision of Works include the documents, appendices and annexures listed at clause 1 of the Form of Agreement.

12 Interpretation and the Law

- 12.1 Any dispute or claim arising out of or in connection with the contract its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of England and Wales as it applies in Wales.
- 12.2 Clause 126 of this contract shall apply to any dispute or claim which may arise out of or in connection with the subject matter and / or formation of this contract.
- 12.3 This contract is the entire agreement between the Parties.

- 12.4 If any provision of this contract shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from this contract and shall be deemed to be deleted from this contract and the validity, legality and enforceability of the remaining provisions shall not be affected.

13 Communications

- 13.1 Each instruction, certificate, quotation for compensation event, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the language of this contract. Where directed by the *Project Manager* the *Contractor* shall provide or receive communications in a format prescribed by the *Project Manager*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, it shall reply within the *period for reply*.
- 13.4 The *Project Manager* shall reply to a communication submitted or resubmitted to it by the *Contractor* for acceptance. If the *Project Manager's* reply is not acceptance, the *Project Manager* shall state its reasons and the *Contractor* shall resubmit the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* shall notify the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* shall issue its certificates to the *Employer* and the *Contractor*. The *Supervisor* shall issue its certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.
- 13.9 The *Contractor* shall retain copies of drawings, specifications, computer data files, reports and other documents which record the works for the *records retention*. The

copies shall be retained in the form stated in the Works Information. The *Contractor* shall provide the *Project Manager* with explanations of the documents as reasonably required.

- 13.10 Any communication required under this contract from the *Contractor* to Others shall be copied simultaneously to the *Project Manager*.
- 13.11 The content of minutes of meetings shall not constitute the issue of instructions, the notification of compensation events or changes in the Works Information.
- 13.12 Any communication sent by hand is deemed to be received upon delivery at such address.

14 The *Project Manager* and *Supervisor* and *Contractor's Representative*

- 14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of its work shall change the *Contractor's* responsibility to Provide the Works or its liability for its design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by its delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or the manner in which the *Contractor* Provides the Works.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after it has notified the *Contractor* of the name of the replacement.
- 14.5 The *Project Manager* acts on behalf of the *Employer* with the authority set out in this clause 14.5 or as otherwise stated in the Contract Data. Except to the extent that the *Employer* may otherwise specify by written notice to the *Contractor* or as otherwise stated in the Contract Data, the *Project Manager* has full authority to receive and issue applications, certificates, consents, instructions, notices, requests or statements and shall act impartially in this regard. All instructions from the *Project Manager* are in writing and signed by the *Project Manager*. For the avoidance of doubt the *Project Manager* does not have the authority to vary the terms of this contract.
- 14.6 Without prejudice to clause 60 (compensation events) no acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer* and / or the *Project Manager* and / or the *Supervisor*, nor any enquiry or inspection which the *Employer* and / or the *Project Manager* and / or the *Supervisor*

makes or has carried out for its benefit or on its behalf at any time, will operate to reduce, extinguish, exclude, limit or modify the *Contractor's* liabilities duties and obligations under the contract unless it is in writing from the *Employer and / or the Project Manager and / or the Supervisor*, refers to the contract and clearly identifies the liability duty or obligation and the extent to which such liability duty or obligation is to be reduced, extinguished, excluded, limited or modified.

- 14.7 The *Contractor* shall ensure that at all times a competent and experienced person is appointed to act as the Contractor's Representative. The Contractor's Representative acts on behalf of the *Contractor* under this contract. The Contractor's Representative may, after notifying the *Employer*, the *Project Manager* and the *Supervisor*, delegate any of its actions and may cancel any delegation. A reference to an action of the Contractor's Representative in this contract includes an action by its delegate. The Contractor's Representative is a *key person* for the purposes of clause 24 and the *Employer* may require the *Contractor* to remove and replace the Contractor's Representative in accordance with that clause.

15 Adding to the Working Area

- 15.1 The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. Reasons for not accepting are that the proposed area is not necessary for Providing the Works or it is used for works not in this contract or it may adversely affect the work of the *Employer* or Others.

16 Early Warning

- 16.1 The *Project Manager* and the *Contractor* shall give an early warning by notifying the other as soon as either becomes aware of any matter which could:
- 16.1.1 increase the total of the Prices,
 - 16.1.2 increase the Price for Work Done to Date beyond any forecast amount of the Prices,
 - 16.1.3 delay Completion,
 - 16.1.4 change the Accepted Programme,
 - 16.1.5 delay in meeting any Completion Date,
 - 16.1.6 impair the usefulness of the Works to the *Employer* or the performance of the Works or the *Project* in use,
 - 16.1.7 result in a failure to meet the Consents,

- 16.1.8 adversely affect the work of the *Employer*, the *InfraCo*, the *Contractor*, or Others,
- 16.1.9 constitute a Defect,
- 16.1.10 adversely affect the *Employer* by increasing the monies payable by the *Employer* to Others engaged on the *Project* and / or cause any disruption to the operation of the Rail Services,
- 16.1.11 result in a breach of this contract or any subcontract,
- 16.1.12 lead to the *Contractor* terminating or suspending any subcontract,
- 16.1.13 cause a breach of any applicable law or
- 16.1.14 increase its total cost.

In the notification the *Contractor* and the *Project Manager* shall state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.

The *Contractor* shall enter early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

- 16.2 Risk reduction meetings shall be held at the intervals set out in the Contract Data. In addition to the intervals set out in the Contract Data, the *Project Manager* or the *Contractor* may instruct the other to attend additional risk reduction meetings. Each may instruct other people (including but not limited to the *InfraCo* and Others) to attend if the other Party agrees.
- 16.3 At a risk reduction meeting, those who attend shall, having regard to and subject to any provisions in this contract, cooperate in:
 - 16.3.1 making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - 16.3.2 seeking solutions that will bring advantage to all those who will be affected,
 - 16.3.3 deciding on the actions which will be taken and who will take them, and
 - 16.3.4 deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
- 16.4 The *Contractor* shall revise the Risk Register to record the decisions made at each risk reduction meeting and issue the revised Risk Register to the *Project Manager*. If a

decision needs a change to the Works Information, the *Project Manager* shall instruct the change following issue of the revised Risk Register. For the avoidance of doubt the *Contractor's* only entitlement to a change in the Fee Target or the Completion Date as a result of any revision to the Risk Register is in accordance with clause 60 and clause 65.

17 Ambiguities and Inconsistencies

17.1 The *Project Manager* or the *Contractor* shall notify the other as soon as either becomes aware of an ambiguity or inconsistency in or between any of the documents which are part of this contract or any associated contract identified in the Works Information.

17.2 The *Project Manager* shall give an instruction to resolve the ambiguity or inconsistency. The *Contractor* shall be responsible for any ambiguity or inconsistency within or between any documents provided by the *Contractor* or on behalf of the *Contractor*. Such instruction is not a compensation event where the *Project Manager* assesses:

17.2.1 that the ambiguity or inconsistency is in respect of a document that it was the responsibility of the *Contractor* to produce as part of the Works, or

17.2.2 that the ambiguity or inconsistency in question arises between the Works Information and / or Site Information, or

17.2.3 that a prudent and experienced contractor familiar with works similar to the Works would have identified such an ambiguity or inconsistency at the Contract Date from the information then available to it, or

17.2.4 that the *Contractor* has been in receipt of the document in which the ambiguity or inconsistency is found for a period of more than three months. For the avoidance of doubt, notification by the *Contractor* of an ambiguity or inconsistency within three (3) months from the *Contractor's* receipt of the document which contains that ambiguity or inconsistency shall be a condition precedent to the *Contractor's* entitlement to a compensation event.

17.3 The *Contractor* is responsible for any ambiguity or inconsistency within or between any documents provided by the *Contractor* or on behalf of the *Contractor*.

18 Illegal and Impossible Requirements

18.1 The *Contractor* shall notify the *Project Manager* as soon as it considers that the Works Information requires it to do anything which is illegal or impossible. If the *Project Manager* agrees, it shall give an instruction to change the Works Information appropriately.

19 Prevention

19.1 If an event occurs which

- stops the Contractor completing the works or
- stops the Contractor completing the works by the date shown on the Accepted Programme,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it,

the Project Manager gives an instruction to the Contractor stating how he is to deal with the event.

2 THE *CONTRACTOR'S* OBLIGATIONS

20 Providing the Works

- 20.1 The *Contractor* shall Provide the Works in accordance with the Works Information. Notwithstanding the Contract Date, any work relating to or forming part of the Works (including any design, enabling, temporary or other preliminary or permanent works) carried out by or on behalf of the *Contractor* prior to the Contract Date shall be subject to the terms of this contract
- 20.2 The *Contractor* shall Provide the Works in accordance with the terms of this contract and in compliance with any applicable law, Statutory Requirements, the Consents and the relevant Standards.
- 20.3 The *Contractor* shall advise the *Project Manager* on the practical implications of the design of all of the Works, the integration of any Works design with the designs of Others and on the subcontracting arrangements.
- 20.4 The *Contractor* shall Provide the Works in accordance with the Required Standard. In exercising this Required Standard, the *Contractor* shall comply with the Sustainable Development Plan, the CVL Engineering Requirements (where applicable), the Code of Construction Practice and the instructions of the *Project Manager* and the *Supervisor*.
- 20.5 The *Contractor* shall proceed regularly and diligently and use all reasonable endeavours to prevent and / or reduce any delay in the progress of the Works.
- 20.6 Not used
- 20.7 The *Contractor* acknowledges that the performance of its duties under this contract is necessary for the purposes of the CVL Transformation.

FORECASTS

- 20.8 The *Contractor* shall prepare forecasts of the total Defined Cost for the whole of the Works in consultation with the *Project Manager* and submit them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data, from the Contract Date until Completion of the whole of the Works (or, if no interval is stated in the Contract Data, at monthly intervals). Each forecast shall be in a format prescribed in the Works Information and shall contain an explanation of the changes made since the previous forecast.

21 The *Contractor's* Design

21.1 The *Contractor* shall design the part of the Works which the Works Information states it is to design.

21.2 The *Contractor* shall submit the particulars of its design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the Works Information or the applicable law.

21.3 The *Contractor* shall not proceed with the relevant Works until the *Project Manager* has accepted its design.

21.4 The *Contractor* may submit its design for acceptance in parts if the design of each part can be assessed fully.

22 Not Used

23 Design of Equipment

23.1 The *Contractor* shall submit particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs it to. The *Project Manager* may refuse to accept the submission if the design of the item will not allow the *Contractor* to Provide the Works in accordance with:

23.1.1 the Works Information,

23.1.2 the *Contractor's* design which the *Project Manager* has accepted, or

23.1.3 any Legislation, any consent or this contract.

24 People

24.1 The *Contractor* shall either employ each *key person* named to do the job for the *Contractor* stated in the Contract Data or shall employ a replacement person who has been accepted by the *Project Manager*. The *Contractor* shall submit the name, relevant qualifications, training and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that:

24.1.1 a person's relevant qualifications and experience are not as good as those of the person who is to be replaced, or

24.1.2 it is, in the *Project Manager's* reasonable opinion, inappropriate because the *Project Manager* has received specific information from the Serious Fraud Office or the Crown Prosecution Service or because the *Project Manager* has been made aware of any relevant material fact or allegation concerning the

suitability of the person to act in relation to Providing the Works. If the *Project Manager* deems such a person to be inappropriate in accordance with this clause 24.1.2, the *Contractor* does not permit such person to perform any further duties in relation to the Provision of the Works without the prior written consent of the *Project Manager*.

24.2 The *Project Manager* may, acting reasonably and having stated its reasons, instruct the *Contractor* to remove any person under the control of the *Contractor*. The *Contractor* shall then arrange that, after one (1) day, such person has no further connection with the Works.

24.3 The *Contractor* shall not remove any *key person* from the Works for more than twenty one (21) consecutive days without the prior written consent of the *Project Manager*, save where such *key person* is absent on sick leave, or other statutory leave (such as jury service / maternity / paternity or adoption leave) or has left the *Contractor's* employment in which case the *Contractor* shall provide a suitable replacement, who is to be approved by the *Project Manager*.

25 Working with the *Employer* and Others

25.1 The *Contractor* shall cooperate with the *Employer*, the *Project Manager*, the *Supervisor* and Others in obtaining and providing information which they need in connection with the Works. The *Contractor* shall cooperate with Others, co-ordinate its activities with them and share the Working Areas with them as stated in the Works Information.

25.2 Where necessary to Provide the Works the *Contractor* shall hold or attend meetings with Others and shall inform the *Project Manager* in advance of these meetings and the *Employer* and the *Project Manager* may attend these meetings. The *Contractor* shall notify the *Project Manager* if any other person is not fully and actively cooperating with it.

25.3 The *Contractor* shall coordinate its activities with those of Others as required by the Works Information and in accordance with the instructions of the *Project Manager*.

25.4 Not used

25.5 Unless provided for in the Works Information or authorised by written instruction by the *Project Manager*, the *Contractor* shall Provide the Works and shall correct Defects in such a way as not to cause delay or disruption to the *Employer*, the *InfraCo* or Others. In the event that Providing the Works or correcting Defects causes delay or disruption to the *Employer*, the *InfraCo* or Others the *Contractor* shall take all reasonable steps to mitigate and minimise such delay or disruption.

26 Subcontracting

- 26.1 If the *Contractor* subcontracts work, it shall be responsible for Providing the Works as if it had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.
- 26.1A If the Contractor is authorised under the PAR Process to procure Plant and Materials before the Approved for Construction (AFC) documentation has been approved in accordance with the contract then the risk of any change in the design of such Plant and Materials from the design used for the procurement shall be borne by the Employer provided that such change has not been caused by any breach of the contract by the Contractor.
- 26.2 The *Contractor* shall submit to the *Project Manager* the name of each proposed Subcontractor for acceptance. The *Contractor* shall submit a copy of the proposed subcontract documentation and such other information as the *Project Manager* may require. Reasons for not accepting a proposed Subcontractor and / or a proposed subcontract include (but are not limited to):
- 26.2.1 the appointment will not allow the *Contractor* to Provide the Works,
 - 26.2.2 the *Contractor* has not complied with any requirements in the Works Information regarding the acceptance or appointment of subcontractors,
 - 26.2.3 the proposed subcontractor does not have an acceptable health and safety track record on other projects,
 - 26.2.4 the subcontract relates to a Key Subcontractor and does not include a requisite obligation to enter into collateral warranties, proposals which are satisfactory to the Project Manager for open book costs determinations where the subcontract is to be let on the basis of an Option E or Option C NEC form of subcontract and/or reasonable breakage costs in the event of termination,
 - 26.2.5 the *Contractor* has selected an affiliate of the *Contractor* as a Subcontractor and such Subcontractor has not been reasonably selected on the basis of a fair and open competition and / or the proposed subcontract terms are on terms which are unreasonably favourable to such affiliate,
 - 26.2.6 the proposed Subcontractor is unable to demonstrate to the satisfaction of the Employer that it has professional indemnity insurance at the level specified in the Works Information, or if no level is so specified in relation to the particular package of works, at a level that is reasonable having regard to the nature and extent of the services and / or works to be carried out by the proposed

Subcontractor and the prevailing market conditions for professional indemnity insurance

- 26.2.7 the proposed Subcontractor has been employed on other matters in the past by the Employer and in the Employer's reasonable opinion the past performance of the Subcontractor on those matters has not met the standard of a reasonably competent Subcontractor experienced in work of similar size and complexity as the work the Subcontractor is being considered for in relation to this contract.
- 26.2.8 The Contractor shall not appoint a proposed Subcontractor until the Project Manager has accepted the proposed Subcontractor, provided always that in the event that the Project Manager has not raised any objection to the Contractor within 7 days of receiving such request from the Contractor, the parties shall treat the Subcontractor as accepted.
- 26.2.9 The Contractor shall submit the proposed contract to the Project Manager for acceptance for each of the packages specified in the Works Information:
- 26.2.10 Where the contract is not based upon NEC terms and conditions; and/or
- 26.2.11 The Contractor has not provided prior written notification to the Project Manager of the payment mechanism to be used under such contract.
- 26.3 The Contractor shall not appoint a Subcontractor on the proposed subcontract conditions submitted until the Project Manager has accepted them. Reasons for not accepting the terms include:
 - 26.3.1 not used,
 - 26.3.2 they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
 - 26.3.3 the Contractor has not complied with any requirements in this contract and / or Works Information regarding the appointment or acceptance of subcontractors,
 - 26.3.4 the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
 - 26.3.5 the proposed subcontract work represents, in the Employer's reasonable opinion, too large a proportion of the total Works,

- 26.3.6 the proposed subcontract conditions do not include any of the key flow down provisions listed in the Works Information,
- 26.3.7 the proposed subcontract relates to a Key Subcontractor and the terms do not require the provision of subcontractor collateral warranties in accordance with clause 101,
- 26.3.8 the proposed subcontract does not require the proposed Subcontractor to grant a non-exclusive, perpetual irrevocable royalty free licence to the *Employer* to use the Third Party Background IPR (including the right to assign, novate, and otherwise transfer and / or grant sublicences) of an equivalent extent and nature to those required by this contract in all documents, drawings, materials, computer software and any other material or works prepared or developed by or on behalf of the proposed Subcontractor in the performance of the subcontract,
- 26.3.9 the proposed subcontract does not require the Subcontractor to warrant and undertake that it has the right to grant to the *Employer* a licence to use the Third Party Background IPR equivalent to the warranty given by the *Contractor*,
- 26.3.10 the proposed subcontract does not impose equivalent obligations of confidentiality on the proposed Subcontractor to those required by this contract,
- 26.3.11 the proposed subcontract terms do not contain a provision:
- (a) stating that the *Contractor* shall be entitled to suspend performance of the proposed subcontract where requested to do so by the *Employer* and the proposed Subcontractor shall not be entitled to a compensation event in respect of such suspension,
 - (b) stating that the proposed Subcontractor shall not be entitled to any loss of profits, loss of fees, loss of chance or other similar losses or any indirect losses or consequential losses arising out of termination of the Subcontractor's engagement.
- 26.4 The *Contractor* shall submit the proposed contract data for each subcontract for acceptance to the *Project Manager* if an NEC contract is proposed or if the *Project Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Works.

26.5 The *Contractor* shall obtain the prior written approval of the *Project Manager* to the appointment of a replacement Subcontractor and the proposed replacement subcontract documentation in the event of any first Subcontractor's appointment being determined and the Parties shall follow the approval and acceptance procedure set out in this clause 26.

26.6 Neither the objection to nor any failure to raise an objection to a proposed Subcontractor by the *Project Manager* and / or the *Employer* shall relieve the *Contractor* of any liability or obligation under this contract.

26.7 Not used

26.8 Not used.

26.9 Not used.

27 Other Responsibilities

APPROVALS

27.1 The *Contractor* shall obtain approvals from Others as specified in the Works Information where necessary to Provide the Works. In particular, insofar as the same have not already been obtained at the Contract Date, the *Contractor* is responsible for obtaining all Consents other than the Employer Consents and for complying with all conditions pertaining to all Consents (whether procured before or after the Contract Date).

27.2 The *Contractor* shall obtain approval of its design in accordance with the Works Information where necessary.

ACCESS

27.3 The *Contractor* shall on reasonable notice provide access to work being done and to Plant and Materials being stored for this contract for:

27.3.1 the *Project Manager*,

27.3.2 the Supervisor, and

27.3.3 Others notified to it by the *Project Manager*.

27.4 The *Employer* shall provide such access to a person, place or thing to the *Contractor* as stated in the Contract Data, the Works Information and/or the Works Delivery Plan on or before the later of its access date and the access date for it shown on the Accepted Programme.

- 27.5 The *Contractor* will grant all necessary rights and will enter into such additional agreements reasonably required by the *Employer* to enable Others to access and / or take temporary possession to carry out works in accordance with their obligations.

INSTRUCTIONS

- 27.6 The *Contractor* shall obey an instruction which is in accordance with the contract and is given to it by the *Project Manager* or the *Supervisor* or the *Employer*.

HEALTH AND SAFETY

- 27.7 The *Contractor* shall act in accordance with the health and safety requirements stated in the Works Information and in accordance with the access requirements stated in any Network Rail access agreements and / or any interface agreements and / or any other terms governing access which shall be set out in the Works Information. The *Contractor* shall co-operate with persons having health and safety responsibilities on or adjacent to the Site for the effective discharge of all such responsibilities. Without prejudice to the generality of the above, if a safety breach is committed by one of the *Contractor's* employees or agents or by any Subcontractor (or one of the Subcontractor's employees or agents) then the *Employer* may (at its sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising its right to terminate with immediate effect pursuant to clause 91.8 and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant person or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

STANDARD OF CARE

- 27.8 The *Contractor* shall be liable for any Defect in the Works unless the *Contractor* can prove that the *Contractor* complied with its obligations under this contract and shall not be liable for any Defects in the Works due to his design so far as he proves that he used the Required Standard to ensure that his design complied with the Works Information. If the *Contractor* corrects a Defect for which it is not liable under this contract it is a compensation event.
- 27.9 In Providing the Works the *Contractor* shall comply with the Required Standard. Notwithstanding any other provision of this contract, there shall be no fitness for purpose obligation imposed on the Contractor in respect of its design obligations.

No DELETERIOUS MATERIALS

- 27.10 Subject to the Works Information and any changes to it, the *Contractor* warrants to the *Employer* that to the extent the *Contractor* is either obliged to specify or approve products or materials for use in the performance of the Works or shall so specify or approve, the *Contractor* will not specify or approve any Deleterious Materials.
- 27.11 If in the performance of its duties under the contract, the *Contractor* becomes aware that it or any person has specified, approved or used any such products or materials, the *Contractor* shall immediately notify the *Project Manager* in writing. This clause does not create any additional duty for the *Contractor* to inspect or check the work of Others which is not required by this contract.

VALUE ENGINEERING

- 27.12 The *Contractor* shall perform the value engineering activities set out in the Works Information.

COMPLY WITH LAWS AND REGULATIONS

- 27.13 In performing its obligations under the contract the *Contractor* shall comply with the applicable law, the Standards, the Consents and the Statutory Requirements to the extent that they impose duties, obligations or restrictions on the *Contractor*.
- 27.14 In the event that the *Contractor* does not fulfil its obligations under this contract due to the infringement of any applicable law or Statutory Requirement and the *Employer* thereby incurs Losses to which it would not otherwise be liable, the amount of such legally awarded and properly mitigated Losses or such other amount set out in a settlement agreement reasonably entered into by the *Employer* with a third party shall be reimbursed by the *Contractor* to the *Employer* as a debt.

COMPLY WITH APPLICABLE STANDARDS

- 27.15 In so far as the Standards relate to any technical standards (as opposed to procedural standards) required by the *Employer* or Network Rail, the *Contractor* warrants that it will perform the Works so that they comply with any such *Employer* or Network Rail standards in force as at the Contract Date.

TIMELY PROVISION OF INFORMATION

- 27.16 The *Contractor* shall provide information and things which this contract requires it to provide in accordance with the Accepted Programme and without the need for programmes or timetables to be extended.

TRESPASS

- 27.17 Without prejudice to the *Contractor's* obligations under clause 136 if the carrying out of the Works is likely to necessitate any interference (including the over-sailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* shall obtain the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer* (such approval not to be unreasonably withheld or delayed). The *Contractor* shall comply (at the *Contractor's* own cost) in every respect with the conditions contained in such agreements.

CDM REGULATIONS

- 27.18 For the purposes of the CDM Regulations:

27.18.1 the *Employer* appoints the *Contractor* to act as Principal Contractor in respect of the Works. Where Others are working on a part of the Site and are also Principal Contractor under their contract, the *Project Manager* shall designate which person shall be Principal Contractor in respect of which part of the Site,

27.18.2 the *Employer* appoints the *Contractor* to act as a Designer for the Works,

27.18.3 the Principal Designer is as stated in the Contract Data.

- 27.19 The *Contractor* shall provide the *Employer* and *Project Manager* with all information reasonably required to facilitate compliance with the CDM Regulations in relation to the Works.

- 27.20 The *Contractor* shall comply with the CDM Regulations. The *Contractor* shall at all times co-operate, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Site and / or in respect of the Works for the effective discharge of those responsibilities.

- 27.21 The *Contractor* warrants to the *Employer* that it is fully aware of the provisions of Regulation 9 (Duties of designers) of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 9.

- 27.22 The *Contractor* is fully conversant with the guidance published by the Health and Safety Executive in relation to the CDM Regulations and acknowledges that in relation to the Works it is a "designer" as defined in the CDM Regulations. The *Contractor* shall use all reasonable skill, care and diligence to comply with its obligations and duties as a

designer as defined and specified in the CDM Regulations and in accordance with the guidance.

LIEN AND ENCUMBRANCE

27.23 The *Contractor* will not create, or allow any other person to create, any lien or encumbrance on any property of the *Employer*.

ACCIDENTS ON SITE

27.24 The *Contractor* shall report to the *Project Manager* details of any serious accident or fatality to any person employed by or contracted to it on the Site as soon as possible after an accident occurs.

GOODS VEHICLES OPERATOR'S LICENCE

27.25 Without prejudice to the requirements set out in the Works Information, each goods vehicle used by the *Contractor* or its Subcontractors in connection with this contract shall display the vehicle licence disc relevant to the goods operator's licence under which the vehicle is operated or, in the absence of an operator's licence disc, the vehicle shall carry documentation giving the operator's licence number, name and address.

ROUTING OF VEHICLES

27.26 Without prejudice to the requirements set out in the Works Information, the *Contractor*, its Subcontractors and suppliers shall comply with the requirements set out in this contract for the routing of their vehicles (the *Project Manager* does not in specifying requirements warrant in any way that the route(s) will be available in full or in part for the whole or any part of the duration of the Works). The *Contractor* shall erect and maintain in good condition signs of a type approved by the *Project Manager* giving effect to these routing requirements.

SPECIAL REQUIREMENTS OF STATUTORY BODIES

27.27 The *Contractor*:

27.27.1 shall comply with all requirements of Statutory Undertakers,

27.27.2 shall take these special requirements into account in order to Provide the Works.

NO WARRANTY

27.28 Subject to clause 27.29A the *Contractor* acknowledges that the *Employer* does not warrant the accuracy or completeness of any data or information provided to the

Contractor by the *Employer* or the *Project Manager* relating to the location, size, nature or condition of the Site or any services in, on, over or under the Site or in the vicinity of the Site and that, without prejudice to its rights under and in accordance with clause 60 (Compensation Events), the *Contractor* neither has nor will have any claim of any kind against the *Employer* based upon the accuracy or completeness of any such data or information save the *Contractor* shall be entitled to rely in all regards upon the site being fully remediated with the remediation works having been carried out by Others. For the avoidance of doubt any additional measures necessary for the handling or removal of contaminated material or the implications of the same shall be treated in all regards as a compensation event pursuant to clause 60.1(12).

27.29 Subject to clause 27.29A the *Contractor* has had the opportunity of inspecting the physical conditions and other conditions of the Site and structures upon it and acknowledges that, without prejudice to its rights under and in accordance with clause 60 (Compensation Events), it shall be solely responsible for ensuring that the ground, 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 Works and the *Contractor* shall be responsible for dealing with any other matters required to be dealt with in order to complete the Works.

27.29A Notwithstanding Clauses 27.28 and 27.29 above, the Project Manager and Employer acknowledges that the warranted design documents listed in the Contract Data are warranted by the Employer and therefore the provisions of Clause 115 do not apply in respect of the warranted design documents. For the avoidance of doubt, the warranted design documents are included within the Employer's design for the purposes of Clauses 80.1.1(c) and 60.1.12 and any change to the Works Information resulting from material deficiencies in the accuracy, completeness or conformity of the warranted design documents shall be a compensation event under Clause 60.1.1.

QUALITY STATEMENT

27.30 The Quality Statement sets out the *Contractor's* proposals for the management and resourcing of the Works.

QUALITY MANAGEMENT

27.31 The *Contractor* shall implement and operate a quality management system for Providing the Works as stated in the Works Information. The quality management system shall comply with the requirements stated in Works Information.

- 27.32 The *Contractor* shall provide the *Project Manager*, within the period stated in the Contract Data, with a Quality Plan for acceptance in accordance with the Works Information.
- 27.33 The *Contractor* shall comply with an instruction from the *Project Manager* to the *Contractor* to correct a failure to comply with the Quality Plan.
- 27.34 The *Contractor* warrants:
- 27.34.1 that the representations contained in the Quality Plan are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer*, and
- 27.34.2 that the Quality Plan does not constitute a qualification to its tender. Should any discrepancy arise between the Quality Plan and other contractual documents, the Works Information takes precedence.
- 27.35 A reason for not accepting the Quality Plan is that:
- 27.35.1 it is inadequately prepared or is not practicable,
- 27.35.2 It does not incorporate the information which this clause requires, or
- 27.35.3 it does not represent a realistic approach for the Works.
- 27.36 Any Subcontractor appointed by the *Contractor* shall operate a quality system enabling it to comply with the *Contractor's* Quality Plan.

COMPLAINTS

- 27.37 The *Contractor* shall ensure that it has a complaints procedure in respect of complaints about the Works, which shall be accepted by the *Project Manager* from time to time.
- 27.38 The *Contractor* shall ensure that it is stated in its complaints procedure that the Works provided are being provided on behalf of the *Employer*, and that in the event that any member of the general public is dissatisfied with the manner in which or the standard to which the Works are being undertaken, they may (but only after exhausting the *Contractor's* complaints procedure) make a formal complaint to the *Project Manager*.

28 The Employer's Obligations

- 28.1 The *Employer* shall provide the information and things which this contract requires it to provide in accordance with the Accepted Programme.

- 28.2 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Plan or Works Information. After Completion, an instruction shall only be given if it is necessary to Provide the Works.
- 28.3 The *Project Manager* shall not give an instruction to the *Contractor* which would require the *Contractor* to act in a way that is outside the *Contractor's* professional code of conduct.

3 **TIME**

30 **STARTING AND COMPLETION**

30.1 The *Contractor* shall not start the Works on the Site until the first access date and shall do the Contractor Work so that Completion is on or before the Completion Date.

30.2 The *Contractor* shall notify the *Project Manager* when in its opinion the Works will have been completed in accordance with this contract and request an inspection. The *Project Manager* and the *Contractor* shall undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The *Supervisor* may attend the inspection.

30.3 The *Contractor* shall provide all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the Works have been so completed. If the *Project Manager* is satisfied that the Works have been so completed, the *Project Manager* shall decide the date of Completion. The *Project Manager* shall certify Completion within one (1) week of Completion. If the *Project Manager* is not so satisfied, it shall notify the *Contractor* of its reasons for not accepting that the Works have been completed and the *Contractor* shall notify the *Project Manager* in accordance with clause 30.2 when the necessary corrective action has been taken.

31 **The Programme**

31.1 If a programme is not identified in the Contract Data, the *Contractor* shall submit a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.

31.2 The *Contractor* shall show on each programme which it submits for acceptance:

31.2.1 the Contract Date, access dates and Completion Date,

31.2.2 planned Completion,

31.2.3 the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works and any interfaces with any other activities and work being undertaken for the Project but which do not form part of the Works (including interfaces with Others),

31.2.4 the order and timing of the work of the *Employer* and Others as last agreed with them or, if not so agreed, as stated in the Works Information,

- 31.2.5 the dates when the *Contractor* plans to complete other work or services needed to allow the *Employer* and Others to do their work or services,
- 31.2.6 provisions for
- (a) float,
 - (b) time risk allowances,
 - (c) environmental and health and safety requirements, and
 - (d) the procedures set out in this contract.
- 31.2.7 the dates when, in order to Provide the Works in accordance with the *Contractor's* programme, the *Contractor* will need:
- (a) access to part of the Site if later than its access date,
 - (b) acceptances,
 - (c) Plant and Materials and other things to be provided by the *Employer*,
 - (d) information from Others; and
 - (e) the *Employer* to obtain the *Employer* Consents,
- 31.2.8 for each operation, a statement of how the *Contractor* plans to do the work identifying the resources and the principal Equipment which the *Contractor* plans to use,
- 31.2.9 for each operation forecast resources required for that operation,
- 31.2.10 its access requirements in accordance with the Works Information, and
- 31.2.11 other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.
- 31.3 Within two (2) weeks of the *Contractor* submitting a programme to it for acceptance, the *Project Manager* shall either accept the programme or notify the *Contractor* of its reasons for not accepting it. A reason for not accepting a programme is that:
- 31.3.1 the *Contractor's* plans which it shows are not practicable,
 - 31.3.2 it does not show the information which this contract requires,
 - 31.3.3 it does not represent the *Contractor's* plans realistically,

- 31.3.4 it does not comply with the Works Information or any Consent,
 - 31.3.5 it does not allow the *Employer* and / or Others to start or carry out and complete their work as planned and subsequently to maintain any assets or facilities delivered as a result of such work,
 - 31.3.6 it is not in a format which is accepted for use by the *Employer*,
 - 31.3.7 the co-ordination of the work of the *Contractor* and Others who are performing or will perform the Works is unsuitable.
- 31.4 Not used.
- 32 Revising the Programme**
- 32.1 The *Contractor* shall show on each revised programme:
- 32.1.1 the actual progress achieved on each operation and its effect upon the timing of the remaining work,
 - 32.1.2 the effects of implemented compensation events,
 - 32.1.3 the effects of decisions reached and approved by the *Project Manager* at risk reduction meetings,
 - 32.1.4 how the *Contractor* plans to deal with any delays and to correct notified Defects, and
 - 32.1.5 any other changes which the *Contractor* proposes to make to the Accepted Programme.
- 32.2 The *Contractor* shall submit a revised programme to the *Project Manager* for acceptance:
- 32.2.1 within the *period for reply* after the *Project Manager* has instructed the *Contractor* to submit a revised programme,
 - 32.2.2 following the implementation of a compensation event which has an impact on Completion,
 - 32.2.3 when the *Contractor* chooses to and, in any case,
 - 32.2.4 at no longer interval than the interval stated in the Contract Data from the Contract Date until Completion of the whole of the Works.

33 Access To and Use of the Site

- 33.1 Subject to the provisions of the Works Information and this contract regarding access, the *Employer* shall allow access to and use of each part of the Site to the *Contractor* which is necessary for the work included in this contract. Access and use shall be allowed on or before the later of its access date and the date for access shown on the Accepted Programme.
- 33.2 The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

34 Instructions to stop or not to start work

- 34.1 The *Project Manager* may instruct the *Contractor* to stop or not to start any work and may later instruct the *Contractor* that the *Contractor* may re-start or start such work.
- 34.2 During any period of suspension, the *Contractor* shall protect, store and secure such part of the Works against any deterioration, loss or damage; and shall take all reasonable steps to avoid and / or mitigate the costs arising from such suspension whilst nevertheless complying with its obligations under this contract.

35 Take over

- 35.1 The *Employer* need not take over the Works before the Completion Date if it is stated in the Contract Data that it is not willing to do so. Otherwise the *Employer* shall take over the Works not later than two (2) weeks after Completion.
- 35.2 The *Employer* may use or permit Others to use any part of the Works before Completion has been certified. If the *Employer* does so, it does not take over, and is not treated as having taken over, the part of the Works when the *Employer* (or Others) begins to use it and save where this contract expressly states in writing to the contrary the *Contractor* shall remain responsible for the care and protection of that part of the Works and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and / or Others until Completion however should any repairs or maintenance be required or expenses incurred due to any act or omission of the *Employer* or Others these shall be treated as a compensation event.
- 35.3 The *Project Manager* shall certify the date upon which the *Employer* takes over any part of the Works and its extent within one (1) week of the date.

36 Acceleration

- 36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for acceleration to achieve Completion before the Completion Date. A quotation for acceleration shall comprise proposed changes to the Fee Target and a revised programme showing the earlier Completion Date. The *Contractor* shall submit details of its assessment with each quotation.
- 36.2 The *Contractor* shall submit a quotation or gives its reasons for not doing so within the *period for reply*.
- 36.3 In the event that either
- 36.3.1 the *Contractor* refuses to provide a quotation within the *period for reply*; or
- 36.3.2 the *Contractor* and the *Project Manager* do not agree the quotation provided
- this shall constitute a dispute or difference between the Parties and may be referred by either Party to the Dispute Resolution Procedure in accordance with Appendix 6.
- 36.4 When the *Project Manager* accepts a quotation for acceleration to the Works, it changes the Completion Date and the proposed changes to the Fee Target and accepts the revised programme.

4 TESTING AND DEFECTS

40 TESTS AND INSPECTIONS

40.1 This clause only applies to tests and inspections required by the Works Information, any Consent or Legislation.

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

40.3 The *Contractor* and the *Supervisor* shall each notify the other of each of its tests and inspections before it starts and afterwards notify the other of its results. The *Contractor* shall notify the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by the *Contractor*.

40.4 If a test or inspection shows that any work has a Defect, the *Contractor* shall correct the Defect and the test or inspection shall be repeated.

40.5 The *Supervisor* shall perform its tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor's* test or inspection being successful shall become due at the end of the last *defect correction period* if:

40.5.1 the *Supervisor* has not done the test or inspection, and

40.5.2 the delay to the test or inspection is not the *Contractor's* fault.

40.6 The *Project Manager* shall assess the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* shall pay the amount assessed.

40.7 When the *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found, the *Project Manager* shall not include the *Contractor's* cost of carrying out the repeat test or inspection.

41 Testing and Inspection before Delivery

41.1 The *Contractor* shall not bring to the Working Areas those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the *Supervisor* has notified the *Contractor* that they have passed the test or inspection.

42 Searching and Notifying Defects

42.1 Until the *defects date*, the *Supervisor* may instruct the *Contractor* to search for a Defect. The *Supervisor* shall give its reason for the search with its instruction. Searching may include:

42.1.1 uncovering, dismantling, re-covering and re-erecting work,

42.1.2 providing facilities, materials and samples for tests and inspections done by the *Supervisor*, and

42.1.3 doing tests and inspections which the Works Information does not require.

43 Correcting Defects

43.1 The *Contractor* shall correct a Defect whether or not the *Supervisor* notifies the *Contractor* of it.

43.2 Subject to clause 46 (Critical Defects and Snagging Defects clause), the *Contractor* shall correct a notified Defect before the end of the defect correction period. The defect correction period begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.

43.3 The *Supervisor* shall issue the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.

43.4 The *Project Manager* shall arrange for the *Employer* to allow the *Contractor* access to and use of a part of the Works which it has taken over if they are needed for correcting a Defect, provided always that such access and use shall be subject to the *Contractor's* compliance with the reasonable requirements of the Operator of the rail system of which the completed works will comprise part. In this case the *defect correction period* begins when the necessary access and use have been provided.

44 Accepting Defects

44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.

44.2 If the *Project Manager* is prepared to consider the change, the *Contractor* shall submit a quotation for reduced Fee Target or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, it shall give an instruction to change the Works Information and the Fee Target and the Completion Date accordingly.

45 Uncorrected Defects

- 45.1 If the *Contractor* is given access in order to correct a notified Defect but it has not corrected it within its *defect correction period*, the *Project Manager* shall assess the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* shall pay this amount. The Works Information shall be treated as having been changed to accept the Defect.
- 45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* shall assess the cost to the *Contractor* of correcting the Defect and the *Contractor* shall pay this amount. The Works Information shall be treated as having been changed to accept the Defect.

46 Critical Defects and Snagging Defects

- 46.1 The *Contractor* acknowledges and agrees that the *Project Manager* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Contractor*, at the cost of the *Contractor*. Without prejudice to any other right or remedy of the *Employer*, the *Contractor* shall pay to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Supervisor* shall notify the *Contractor* of a Critical Defect as soon as reasonably practicable.
- 46.2 Snagging Defects shall be completed in accordance with the timescales agreed between the parties (as may be reasonably adjusted to reflect any delay caused by matters that are the responsibility of the *Employer*, the *Project Manager* or the *Supervisor*), or if no such timescales are agreed, in accordance with clause 43.

5 PAYMENT

50 ASSESSING THE AMOUNT DUE FOR THE WORKS

- 50.1 The *Project Manager* shall assess the amount due at each assessment date. The first assessment date shall be the eighth day of the month in which the *Contractor* commences the Works. Later assessment dates shall occur on the eighth day of each subsequent month until the month after the *Supervisor* issues the Defects Certificate and provided that, if any such date is not a Working Day, then the assessment date shall occur on the next Working Day.
- 50.2 The *Contractor* shall submit an application for payment to the *Project Manager* in a form acceptable to the *Project Manager* not less than four (4) days prior to each assessment date. The application shall state the sum that the *Contractor* considers to be due to it at the payment due date and the basis on which that sum is calculated including the supporting information specified in the Works Information. This is a condition precedent to the *Contractor's* entitlement to be paid an amount following an assessment date.
- 50.3 The amount due is:
- 50.3.1 the Price for Work Done to Date,
 - 50.3.2 plus other amounts to be paid to the *Contractor*,
 - 50.3.3 less amounts to be paid by or retained from the *Contractor*.
- Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.
- 50.4 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date shall be retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.
- 50.5 If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date shall be retained in assessments of the amount due and shall not be payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.
- 50.6 In assessing the amount due, the *Project Manager* shall consider any application for payment the *Contractor* has submitted in accordance with clause 50.2. The *Project Manager* shall give the *Contractor* details of how the amount due has been assessed.

- 50.7 The *Project Manager* shall correct any wrongly assessed amount due in a later payment certificate.
- 50.8 Payments of Defined Cost made by the *Contractor* in a currency other than the currency of this contract are included in the amount due as payments to be made to it in the same currency. Such payments shall be converted to the currency of this contract in order to calculate the Fee using the *exchange rates*.
- 50.9 Not used
- 50.10 If any of the warranties required under clauses 101 and / or 102 are not provided to the *Employer* in accordance with the terms of this contract, 25% (twenty five per cent) of the Price for Work Done to Date (or the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor, in the case of warranties required under clause 102) shall be retained in assessments of the amount due and shall not be payable to the *Contractor* until such warranties have been delivered.
- 50.11 If the *Contractor's* employment is terminated under clause 91 because the *Contractor* has become insolvent within the meaning referred to in clause 91.1, the *Employer* need not pay any sum due to the *Contractor* other than any amount due to it under clause 90.4 either:
- 50.11.1 where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or the *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
- 50.11.2 in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

51 Payment

- 51.1 The *Project Manager* shall certify a payment not later than five (5) days after each payment due date and issue a copy of the payment certificate to the *Contractor*. The first payment shall be the amount due. Other payments shall be the change in the amount due since the last payment certificate. A payment shall be made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments shall be in the currency of this contract unless otherwise stated in this contract.
- 51.2 The date on which payment becomes due is the later of:

- 51.2.1 the assessment date, or
- 51.2.2 four (4) days after the date of receipt by the *Project Manager* of the *Contractor's* application for payment in accordance with clause 50.2.
- 51.3 The final date for payment is twenty-one (21) days after the due date for payment.
- 51.4 The *Project Manager's* certificate is the *Employer's* notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.
- 51.5 Not later than five (5) days after receipt of the payment certificate the *Contractor* shall deliver to the *Employer* (copied to the *Project Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* shall issue a corrected VAT invoice, where required, within two (2) days of receipt of a Pay Less Notice.
- 51.6 Subject to clause 51.8, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest shall be paid on the late payment. Interest shall be assessed from the final date by which the late payment should have been made until the date when the late payment is made, and shall be included in the first assessment after the late payment is made.
- 51.7 If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* shall be, subject to clause 51.8, the sum stated as due in the *Contractor's* application in accordance with clause 50.2.
- 51.8 If either Party intends to pay less than the notified sum, it shall notify the other Party not later than seven (7) days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated (a 'Pay Less Notice'). A Party shall not withhold payment of an amount due under this contract unless it has notified its intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the Pay Less Notice may be given on its behalf by the *Project Manager*.
- 51.9 If an amount due is corrected in a later certificate either:
- 51.9.1 by the *Project Manager* in relation to a mistake or a compensation event, or
- 51.9.2 following a decision of the Adjudicator or the courts,
- interest on the correcting amount shall be paid. Interest shall be assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and shall be included in the assessment which includes the correcting amount.

51.10 Interest shall be calculated on a daily basis at the interest rate and is simple interest.

52 Defined Cost

52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. The Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.2 The *Contractor* shall keep these records:

52.2.1 full accounts of all costs relating to the Works,

52.2.2 accounts of payments of Defined Cost,

52.2.3 proof that the payments have been made,

52.2.4 copies of enquiry or instructions to tender documentation and tender clarification documents in respect of subcontracts,

52.2.5 copies of tenders received from Subcontractors,

52.2.6 tender assessment documents,

52.2.7 post-tender clarifications,

52.2.8 communications about and assessments in respect of the Works and compensation events, including those undertaken by Subcontractors,

52.2.9 other records as stated in the Works Information and

52.2.10 information used to compile forecasts of Defined Cost.

52.3 All such records shall be kept in accordance with good accountancy practice and shall include all details and levels of breakdown specified in the Works Information.

52.4 The *Contractor* shall allow the *Project Manager* to inspect at any time within working hours the accounts and records which it is required to keep and provide such access and verification as the *Project Manager* requests.

52.5 The *Contractor* shall provide to the *Project Manager* reports each month summarising the costs relating to the Works in the preceding month and in respect of the Works to date in the form set out in the Works Information. Such reports shall also contain the *Contractor's* estimate of the costs to be incurred in respect of the Works to Completion.

52.6 The *Project Manager* shall be entitled to receive further information and explanations from the *Contractor* as the *Project Manager* reasonably considers necessary to enable the *Project Manager* to form an opinion on these records and accounting methods.

52.7 The *Contractor* shall ensure that the terms of all subcontracts include provisions materially similar to this clause 52 so that the *Contractor* is able to obtain the records and information required to enable the *Contractor* to comply with its obligations under this clause 52.

53 Not used

54 Suspension of Performance For Payment Default

54.1 Without affecting the *Contractor's* other rights and remedies, if:

54.1.1 payment to the *Contractor* by the *Employer* in respect of the Works has not been paid in full by the final date for payment in accordance with this contract; and

54.1.2 notification of intention to pay less than the notified sum has not been given in accordance with clause 51.8,

the *Contractor* may issue a written notice to the *Project Manager* with a copy to the *Employer* of its intention to exercise its right to suspend performance under the Act setting out the grounds for suspension (the "**First Notice**"). If the failure continues for twenty eight (28) days after receipt by the *Employer* of the First Notice, the *Contractor* may exercise its right to suspend performance under the Act with immediate effect by giving the *Project Manager* a further notice in writing also copied to the *Employer*. If the *Contractor* exercises its right under the Act to suspend its performance, it is a compensation event.

54.2 The right of the *Contractor* to suspend its performance shall end when the amount that should be paid to the *Contractor* is paid to it in full.

55 Not used

56 Set-Off

56.1 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever:

56.1.1 under this contract any sum of money is recoverable from or payable by the *Contractor* or

56.1.2 any Losses are reasonably and properly owed to, or incurred by, the *Employer* under or arising out of this contract,

then the same may be set-off and / or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

CONSTRUCTION INDUSTRY SCHEME

56.2 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, its obligation to make any payment under this contract shall be subject to the provisions and requirements of the Construction Industry Scheme and the *Contractor* shall comply with the provisions of the Works Information regarding the Construction Industry Scheme.

6 COMPENSATION EVENTS

60 **COMPENSATION EVENTS FOR THE PROVISION OF WORKS**

60.1 The following are compensation events, but only to the extent that they are not due to any breach, unlawful act or omission, negligence, default and / or failure to comply with this contract by the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event.

60.1.1 The *Project Manager* gives an instruction changing the Works Information except:

- (a) a change made in order to accept a Defect, or
- (b) a change to the Works Information provided by the *Contractor* for its design which is made either at its request or to comply with other Works Information provided by the *Employer*, or
- (c) an instruction which is stated in this contract not to give rise to a compensation event.

60.1.2 Subject to the requirements of this contract and the Works Information regarding access and the giving of proper and timely notice and proper coordination by the *Contractor*, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its access date and the date shown on the Accepted Programme.

60.1.3 The *Employer* does not provide something which it is to provide by the date for providing it shown on the Accepted Programme.

60.1.4 The *Project Manager* gives an instruction to accelerate or to stop or not to start any work or the manner in which the *Contractor* Provides the Works.

60.1.5 The *Employer* or Others:

- (a) do not work within the times shown on the Accepted Programme, or
- (b) do not work within the conditions stated in the Works Information or
- (c) carry out work on the Site that is not stated in the Works Information.

60.1.6 The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by this contract.

60.1.7 The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

60.1.8 The *Project Manager* or the *Supervisor* changes a decision which it has previously communicated to the *Contractor*.

60.1.9 The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for a change to the Works Information requested by the *Contractor* or for not correcting a Defect) for a reason not stated in this contract.

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.

60.1.11 A test or inspection done by the *Supervisor* causes unnecessary delay.

60.1.12 A weather measurement is recorded

- within a calendar month,
- before the Completion Date for the whole of the works and
- at the place stated in the Contract Data

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

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

60.1.13 An event occurs which is an *Employer's* risk stated in this contract, including where the circumstances in clause 35.2 apply.

60.1.14 The *Project Manager* certifies takeover of a part of the Works before both Completion and the Completion Date.

60.1.15 The *Employer* does not provide materials, facilities and samples for tests and inspections as stated in the Works Information.

60.1.16 The *Project Manager* notifies a correction to an assumption which it has stated about a compensation event.

60.1.17 A breach of contract or act of prevention on the part of the *Employer* (except to the extent caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.

60.1.18 A Coronavirus disease pandemic notified by the World Health Organisation, other than Coronavirus disease Covid-19

60.1.19 An event which

- stops the Contractor completing the works or

and which

- neither Party could prevent,
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract

provided that the occurrence of a compensation event under clause 60.1.20 may give rise to an adjustment to the Completion Date and any Key Date but will not result in any adjustment to the Prices.

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

60.2.1 the Site Information;

60.2.2 publicly available information referred to in the Site Information;

60.2.3 information obtainable from a visual inspection of the Site; and

60.2.4 other information which an experienced contractor could reasonably be expected to have or to obtain.

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

61 Notifying Compensation Events

61.1 For compensation events which arise from the *Employer*, the *Project Manager* or the *Supervisor* giving an instruction, changing an earlier decision or correcting an assumption, the *Project Manager* shall notify the *Contractor* of the compensation event at the time of that communication. The *Project Manager* will then instruct the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The *Contractor* shall put the instruction or changed decision into effect.

61.2 The *Project Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* shall not put a proposed instruction or a proposed changed decision into effect.

61.3 The *Contractor* shall notify the *Project Manager* of an event which has happened or which the *Contractor* expects to happen as a compensation event if:

61.3.1 the *Contractor* believes that the event is a compensation event, and

61.3.2 the *Project Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within eight (8) weeks of becoming aware of the event, the *Contractor* is not entitled to a change in the Fee Target or the Completion Date unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction, changing an earlier decision or correcting an assumption. The *Project Manager* may notify the *Contractor* of a change to the Completion Date (but not a change to the Fee Target) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause.

61.4 If and to the extent the *Project Manager* decides that an event notified by the *Contractor*:

61.4.1 arises from a fault, error, breach of contract, breach of statutory duty, omission or negligence of the *Contractor* or any of its employees or agents or of any Subcontractor or their employees or agents,

61.4.2 has not happened and is not expected to happen,

61.4.3 has no effect upon the Defined Cost or Completion, or

61.4.4 is not one of the compensation events stated in this contract,

the *Project Manager* shall notify the *Contractor* of its decision that the Fee Target and the Completion Date are not to be changed.

If the *Project Manager* decides otherwise, it shall notify the *Contractor* accordingly and instruct the *Contractor* to submit quotations.

If the *Project Manager's* decision is that the Fee Target and the Completion Date are to be changed, it shall notify the *Contractor* of its decision and shall instruct the *Contractor* to submit quotations before the end of either:

61.4.5 one (1) week after the *Contractor's* notification, or

61.4.6 a longer period to which the *Contractor* has agreed.

If the *Project Manager* does not notify its decision, the *Contractor* may notify the *Project Manager* of its failure. A failure by the *Project Manager* to reply within two (2) weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the *Project Manager* shall notify this decision to the *Contractor* when it instructs the *Contractor* to submit quotations.

61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, it shall state assumptions about the event in its instruction to the *Contractor* to submit quotations. Assessment of the event shall be based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* shall notify a correction.

61.7 A compensation event shall not be notified after the defects date. No change in the Fee Target shall be made in respect of any matter notified after the defects date.

61.8 The *Contractor* and the *Project Manager* may agree to implement a procedure by which notifications of compensation events are bundled together and this bundle is submitted for assessment once every four (4) weeks. Such procedure will not apply in respect of any compensation events of such value or nature which require that they should be brought to the attention of the other Party before the next notification date.

62 Quotations for Compensation Events

62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* shall submit the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which it considers practicable.

62.2 Quotations for compensation events shall comprise proposed changes to the Fee Target, the effects upon Fee Instalment and any delay to the Completion Date assessed

by the Contractor. The Contractor shall submit details of its assessment with each quotation. If the programme for remaining work is altered by the compensation event, the Contractor shall include the alterations to the Accepted Programme in its quotation.

62.3 The *Contractor* shall submit quotations within two (2) weeks of being instructed to do so by the *Project Manager*. The *Project Manager* shall then reply within two (2) weeks of the submission. The *Project Manager's* reply shall be either:

62.3.1 an instruction to submit a revised quotation,

62.3.2 an acceptance of a quotation,

62.3.3 a notification that a proposed instruction will not be given or a proposed changed decision will not be made, or

62.3.4 a notification that the *Project Manager* will be making its own assessment.

62.4 The *Project Manager* shall instruct the *Contractor* to submit a revised quotation only after explaining its reasons for doing so to the *Contractor*. The *Contractor* shall then submit the revised quotation within two (2) weeks of being instructed to do so.

62.5 The *Project Manager* shall extend the time allowed for:

62.5.1 the *Contractor* to submit quotations for a compensation event, and

62.5.2 the *Project Manager* to reply to a quotation,

if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* shall then notify the *Contractor* that the extension has been agreed.

62.6 If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* of its failure. If the *Contractor* submitted more than one quotation for the compensation event, the *Contractor* shall state in its notification which quotation it proposes is to be accepted. If the *Project Manager* does not reply to the notification within two (2) weeks and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Project Manager*.

63 Assessing Compensation Events

ASSESSING COMPENSATION EVENTS FOR THE WORKS

63.1 Any changes to the Fee Target are assessed as the effect of the compensation event upon:

63.1.1 the actual Defined Cost of the Works already done, and

63.1.2 the forecast Defined Cost of the Works not yet done.

63.1.3 not used.

The date when the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations will divide the Works already done from the Works not yet done.

63.2 If the effect of a compensation event is to reduce the total Defined Cost, the Fee Target shall not be reduced except as stated in this contract.

63.3 A delay to the Completion Date shall be assessed as the length of time that, due to the compensation event, Completion is later than the Completion Date, provided always that the delay shall only be assessed as giving rise to a change in the Completion Date if and to the extent:

63.3.1 that the compensation event is the principal cause of the delay, and

63.3.2 the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date.

The *Project Manager* may assess and fix an earlier Completion Date if the effect of the compensation event is to reduce the time required for Completion.

Any delay will only be treated as being due to a compensation event if the compensation event is the sole or principal cause of the delay and if the *Contractor* has taken all reasonable steps to avoid and / or mitigate delay and disruption.

63.4 The rights of the *Employer* and the *Contractor* to change the Fee Target (including changes to the Fee Instalments) and the Completion Date will be their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.

63.5 If the *Contractor*:

63.5.1 did not give an early warning of a compensation event which an experienced contractor could have given, or

63.5.2 did not give an early warning at the time it became aware or ought reasonably to have become aware of the matter requiring an early warning,

the event shall be assessed as if the *Contractor* had given early warning at the appropriate time.

- 63.6 Assessment of the effect of a compensation event shall include reasonable and proportionate risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under the contract.
- 63.7 Assessments of the effect of a compensation event shall be based upon the assumptions that the *Contractor* will react competently and promptly to the compensation event, that any Defined Cost and time due to the compensation event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 If an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is a compensation event in accordance with this contract, it shall be assessed as if the Fee Target and the Completion Date were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 Not used
- 63.10 Not used.
- 63.10A If the reduction in scope is significant, not part of any value engineering exercise and the *Employer* then seeks to procure the same from Others, the Contractor shall be paid an amount equal to 4% of the value of the item, thing, matter or work being omitted.
- 63.11 Not used
- 63.12 Not used
- 64 The *Project Manager's* Assessment**
- 64.1 The *Project Manager* shall assess a compensation event:
- 64.1.1 if the *Contractor* has not submitted a required quotation and details of its assessment within the time allowed,
- 64.1.2 if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and it does not instruct the *Contractor* to submit a revised quotation,
- 64.1.3 if, when the *Contractor* submits quotations for a compensation event, it has not submitted a programme or alterations to a programme which this contract requires the *Contractor* to submit, or
- 64.1.4 if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in the contract.

64.2 The *Project Manager* shall assess a compensation event using its own assessment of the programme for the remaining work if:

64.2.1 there is no Accepted Programme, or

64.2.2 the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by the contract.

64.3 The *Project Manager* shall notify the *Contractor* of its assessment of a compensation event and give the *Contractor* details of it within the period allowed for the *Contractor's* submission of its quotation for the same event. This period will start when the need for the *Project Manager's* assessment becomes apparent.

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of this failure. If the *Contractor* submitted more than one quotation for the compensation event, the *Contractor* states in the notification which quotation it proposed is to be accepted. If the *Project Manager* does not reply within two (2) weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

64.5 The *Project Manager* may extend the time allowed for the following actions:

64.5.1 notification of a decision and / or instruction (clause 61.4),

64.5.2 reply to a quotation (clause 62.3), or

64.5.3 assessment of a compensation event (clauses 64.3 and 64.4).

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* shall notify the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.

65 Implementing Compensation Events

65.1 A compensation event shall be implemented when:

65.1.1 the *Project Manager* has notified its acceptance of the *Contractor's* quotation,

65.1.2 the *Project Manager* has notified the *Contractor* of its own assessment, or

- 65.1.3 the *Contractor's* quotation is treated as having been accepted by the *Project Manager*.
- 65.2 The assessment of a compensation event shall not be revised if a forecast upon which it is based is shown by later recorded information to have been wrong.
- 65.3 The changes to the Fee Target, Fee Instalments, the Completion Date shall be included in the notification implementing a compensation event.

7 TITLE

THE PARTIES' USE OF MATERIAL

70 THE EMPLOYER'S TITLE TO PLANT AND MATERIALS

- 70.1 Whatever title the *Contractor* has to Plant and Materials which is outside the Working Areas shall pass to the *Employer* as soon as the *Contractor* or *Supervisor* has marked them as for this contract or the *Employer* makes payment (partial or otherwise) for them, whichever is the earlier. The *Contractor* shall ensure that such Plant and Materials are clearly identified as belonging to the *Employer* and are set aside for the *Employer*.
- 70.2 Whatever title the *Contractor* has to Plant and Materials shall pass to the *Employer* if it has been brought within the Working Areas. Subject to clause 70.1, title to Plant and Materials shall pass back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission.
- 70.3 If requested by the *Project Manager*, the *Contractor* shall provide proof of its title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract.

71 Removing Equipment

- 71.1 The *Contractor* shall remove Equipment from the Site when it is no longer needed unless the *Project Manager* allows it to be left in the Works.

72 Objects and Materials within the Site

- 72.1 The *Contractor* has no title to an object of value or of historical or other interest within the Site. The *Contractor* shall notify the *Project Manager* when such an object is found and the *Project Manager* shall instruct the *Contractor* how to deal with it. The *Contractor* shall not move the object without instructions.
- 72.2 The *Contractor* has title to materials from excavation and demolition only as stated in the Works Information.

73 IPR Rights

FOREGROUND IPR

- 73.1 The Parties agree that the Foreground IPR in all Documentation and works that have been created wholly or mainly in connection with the performance of this contract (including IPR created by a Subcontractor or sub-subcontractor of any tier) vests in the *Employer*. The *Contractor* shall procure that each Subcontractor (or sub-subcontractor

of any tier) shall assign such Foreground IPR prepared or developed by or on behalf of the Subcontractor (or sub-subcontractor) in the performance of the subcontract to the Employer. The Contractor shall not be liable for any use of the Foreground IPR by the Employer or third parties other than that for which the same was originally prepared and provided.

73.2

- 73.2.1 The Employer hereby grants a non-exclusive, non-transferable, royalty free licence to the Contractor to use, and allow its Subcontractors to use, the Foreground IPR and (so far as it is permitted to) the Employer's Background IPR (collectively referred to in this clause as the "**Employer's IPR**") for the duration of this contract for the sole purpose of enabling the Contractor to provide the Works and to comply with its obligations under this contract. The Employer shall not be liable for any use of the Employer's IPR by the Contractor or third parties other than that for which the same was originally prepared and provided.
- 73.2.2 The Contractor shall use, and procure that its Subcontractors use, the Employer's IPR in compliance with any relevant Standards and applicable law.
- 73.2.3 The Contractor shall not use, and shall procure that its Subcontractors do not use, the Employer's IPR in combination with any other trademarks without the Employer's prior written consent.
- 73.2.4 On written request by the Project Manager, the Contractor shall supply to the Project Manager copies or details of items on or in relation to which it has used the Employer's IPR or details of the manner in which they have been used. If the Project Manager reasonably determines that any use of the Employer's IPR is non-compliant with the Standards, the Project Manager shall give the Contractor written notice of that fact and the Contractor shall correct the use so as to comply with the Standards taking into account the Project Manager's instructions.
- 73.2.5 The Contractor shall not be entitled to bring any action against any third party for infringement relating to the Employer's IPR and the Employer shall not be obliged to bring or extend any proceedings relating to the Employer's IPR if it decides in its sole discretion not to do so.
- 73.2.6 As soon as reasonably practicable after expiry or termination of this contract for any reason, the Contractor and its Subcontractors shall cease all use of the Employer's IPR and remove the Employer's IPR or (where removal is not

reasonably practical) destroy or, if the *Project Manager* so elects, deliver it to the *Project Manager* or any other UK company or person designated by the *Project Manager*.

- 73.2.7 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trademarks, trade names, logos or other intellectual property rights of the *Employer*.

CONTRACTOR'S BACKGROUND IPR AND THIRD PARTY BACKGROUND IPR

73.3 In respect of the *Contractor's* Background IPR, the *Contractor* hereby grants and in respect of Third Party Background IPR, the *Contractor* shall procure (or, insofar as relates to the Key Equipment, shall use reasonable endeavours to procure) the grant of a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to assign, novate and otherwise transfer and / or grant sub-licences) to the *Employer* and Others carrying out services or works in relation to the CVL Transformation and Associated Projects to use the *Contractor's* Background IPR and Third Party Background IPR for the following purposes:

- 73.3.1 understanding the Works, the CVL Transformation and Associated Projects,
- 73.3.2 operating, maintaining, repairing, modifying, altering, enhancing, re-configuring, correcting, upgrading and replacing the Works, any Equipment or Plant and Materials,
- 73.3.3 extending, interfacing with, integrating with, connection into and adjusting the Works and / or the CVL Transformation and / or Associated Projects,
- 73.3.4 enabling the *Employer* or Others to carry out the operation, maintenance, repair, modification, alteration enhancement, re-configuration, correction, upgrading and replacement of the CVL Assets and Network Rail's Network,
- 73.3.5 enabling the InfraCo to perform its function and duties as Infrastructure Manager of the CVL Physical System and enabling Network Rail to perform its functions and duties as Infrastructure Manager of Network Rail's Network respectively,
- 73.3.6 executing and completing Works, the CVL Transformation and Associated Projects,
- 73.3.7 designing, testing and commissioning the Works, the CVL Transformation and Associated Projects, and

- 73.3.8 enabling Operators to perform their functions and duties as operators of the Rail Services.
- 73.4 The *Contractor* shall provide to the *Employer* or any person nominated by the *Project Manager* prompt access to all Documentation in whatever form reasonably requested by the *Project Manager* at any time but at the latest on termination or expiry of this contract.
- 73.5 The *Contractor* acknowledges that it is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by the *Contractor* in the performance of this contract and waives any moral rights which the *Contractor* might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Works.
- 73.6 The *Contractor* warrants and undertakes that it has the right to grant to the *Employer* a licence to use the *Contractor's* Background IPR and to Others carrying out works in relation to the CVL Transformation and Associated Projects a licence to use the *Contractor's* Background IPR for all purposes, including (without limitation) for the purposes listed in clause 74.2.
- 73.7 The *Contractor* shall indemnify the *Employer* and Others carrying out works in relation to the CVL Transformation and Associated Projects against all Losses arising out of any use by the *Employer* or Others of the *Contractor's* Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 74.2 infringes the intellectual property rights or other rights of any third party.

COMPUTER GENERATED DATA

- 73.8 The *Contractor* shall supply to the *Employer* all Documentation needed to enable the *Employer* to exercise its IPRs.

IPR CLAIMS

73.9

- 73.9.1 The *Contractor* shall promptly notify the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "**Claims**") relating to the same by the *Contractor* or its subcontractors) which affects or may affect the provision of the Works, the CVL Transformation or Associated Projects.
- 73.9.2 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all Claims and

Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR by the *Contractor* or its subcontractors.

- 73.9.3 The *Employer*, at the request of the *Contractor*, shall give the *Contractor* all reasonable assistance for the purpose of contesting any such Claim. The *Contractor* shall reimburse the *Employer* for all Losses incurred in doing so and / or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such Claim. The *Contractor* shall consult with the *Employer* in respect of the conduct of any Claim and keep the *Employer* regularly and fully informed as to the progress of such Claim.

74 Publicity

- 74.1 Except with the prior written consent of the *Employer*, the *Contractor* shall not make any press announcement or publicise anything in connection with this contract.
- 74.2 The *Contractor* shall ensure the observance of the provisions of clause 75.1 by all Subcontractors and sub-subcontractors.
- 74.3 If the *Employer* agrees with the *Contractor* pursuant to clause 75.1, any text to be used by the *Contractor* in marketing its products and / or services, such agreement may be withdrawn if the text becomes incorrect, incomplete or misleading, in which case the *Contractor* shall forthwith cease using such text.
- 74.4 The provisions of this clause 75 shall apply during the continuance of this contract and indefinitely after its expiry or termination.

8 RISKS, INSURANCE AND LIABILITY

80 THE EMPLOYER'S RISKS

80.1 The following are the *Employer's* risks:

80.1.1 Claims, proceedings, compensation and costs payable which are due to:

- (a) the unavoidable result of the *works* or Providing the Works,
- (b) negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to it except the *Contractor*, or
- (c) a fault of the *Employer* or a fault in its design,

80.1.2 Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received them.

80.1.3 Loss of or damage to the Site, Plant and Materials due to:

- (a) war, civil war, rebellion, revolution, insurrection, military or usurped power,
- (b) strikes, riots and civil commotion not confined to the *Contractor's* employees, or
- (c) radioactive contamination,

Loss of or wear or damage to the parts of the works taken over by the Employer, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to:

- (d) a Defect which existed at take over.
- (e) an event occurring before take over which was not itself an Employer's risk or
- (f) the activities of the Contractor on the Site after take over.

80.1.4 Loss of or wear or damage to any Equipment or Plant and Materials retained by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* after the termination,

80.1.5 Additional *Employer's* risks stated in the Contract Data.

81 The *Contractor's* Risks

81.1 From the Contract Date until the Defects Certificate has been issued, the risks which are not carried by the *Employer* are carried by the *Contractor*.

81.2 Notwithstanding any other provision of this contract, the *Contractor* shall not be entitled to, and waives any entitlement to, any claim against the *Employer* for compensation, cost, time or any other relief in respect of any act, omission or default of the *Contractor*.

82 Repairs

82.1 Until the Defects Certificate has been issued and unless otherwise instructed by the *Project Manager*, the *Contractor* promptly replaces loss of and repairs damage to the Works, Plant and Materials. For the avoidance of doubt, repairs necessary due to acts and omissions of the *Employer* or Others shall be treated as a compensation event.

83 Indemnity

83.1 The *Contractor* shall be responsible for and indemnify the *Employer* against, any and all Losses arising out of:

83.1.1 any failure by the *Contractor* to use the Required Standard,

83.1.2 death or bodily injury to any person whomsoever arising out of or caused by the carrying out of the Works,

83.1.3 loss of or damage to property real or personal (including without limitation the property of the *Employer*) arising out of or caused by the carrying out of the Works, and

83.1.4 any infringement by the *Contractor* of the rights of Others, except an infringement which arose out of the use by the *Contractor* of things provided by the *Employer*,

83.1.5 any other Losses arising under its contracts with Others,

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission or default by the *Contractor*, its employees, subcontractors or agents.

83.2 Without prejudice to the foregoing, the *Contractor* provides this indemnity against:

83.2.1 all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the Works or the *Project*, and

83.2.2 any Losses arising from any nuisance or interference referred to in clause 136 and which could have been avoided by the *Contractor* using all reasonable and practical means.

83.3 The liability of the *Contractor* to indemnify the *Employer* is reduced to the extent that such Losses are caused by the negligence of the *Employer*. The reduction shall be in proportion to the extent that events which were at the *Employer's* risk contributed, taking into account each Party's responsibilities under this contract.

83.4 The indemnity referred to in this clause 83 remains in force for twelve (12) years after Completion of the Works and for the avoidance of doubt shall not exclude the common law duties of mitigation and remoteness.

84 Not Used

85 Insurance cover for the Works

85.1 The *Contractor* and *Employer* shall provide the insurances stated in the Insurance Table at clause 85.2. The *Contractor* shall provide additional insurances as stated in the Contract Data.

85.2 Insurance Table

Insurance Cover	Party responsible for providing the insurance	Minimum amount of cover to be provided
Construction All Risks insurance All risks of loss of or damage to (not excluded by the terms and conditions of the policy) the works and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the works), equipment, temporary buildings and property owned by or supplied by the <i>Employer</i> .	<i>Contractor</i> in the joint names of the Parties	The full reinstatement value of the works
Public liability insurance	<i>Contractor</i> in the joint names of the Parties	Not less than GBP £10,000,000 for any

Insurance Applied	Policy description, cover, conditions and exclusions	Contractual amount of cover, or minimum and maximum amounts
All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and / or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms and conditions of the policy).		one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences happening or consequent upon a cause occurring during the Project Period, other than in relation to claims arising from Pollution or Contamination which will be in the aggregate.
	<p><i>Transport for Wales</i> in the names of :</p> <ol style="list-style-type: none"> 1. <i>Transport for Wales</i> and 2. their Infrastructure Delivery partners and InfraCo and STRIDE Framework suppliers and all contractors and subcontractors of any tier and 3. designers, architects, suppliers, manufacturers and consultants for their activities on the Project Site only 	Not less than GBP £155,000,000 per occurrence.
<i>Employer's liability insurance</i>	<i>Contractor</i>	Not less than GBP £10,000,000 per

Insurance Arranged	Party responsible for maintaining the insurance	Minimum amount of cover to be maintained
Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with this contract or the project		occurrence or as otherwise stated in the Contract Data, whichever is the greater
<i>Contractor's</i> Equipment loss insurance Loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the <i>Contractor</i>	<i>Contractor</i>	The replacement cost
Professional Indemnity Insurance Fault in respect of design of the works or other professional services for which the <i>Contractor</i> or its Subcontractors is responsible	<i>Contractor</i>	GBP £10,000,000 in respect of each claim, without limit to the number of claims in any one year or in the annual aggregate provided that where an aggregate policy is procured then the policy shall provide for a minimum of two automatic reinstatements in any one insurance year.
The risk of physical loss and damage to rolling stock.	<i>Employer</i>	

85.3 In respect of the insurances provided by the *Contractor*

85.3.1 the insurances provide cover from the Contract Date until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* shall ensure that its professional indemnity insurance is in place from the Contract Date until not less than fifteen (15) years after the Defects Certificate,

85.3.2 the *Contractor* shall bear the cost of all premiums,

- 85.3.3 if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps it intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk
- 85.4 The *Contractor* shall not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- 85.5 The *Contractor* shall procure that its Subcontractors (and sub-subcontractors of any tier) maintain:
- 85.5.1 employer's liability (and where appropriate) motor liability insurances as required by law, and
- 85.5.2 professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
- 85.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of its obligations and liabilities under this contract.
- 86 Insurance Policy**
- 86.1 Before the Contract Date and on each renewal of the insurance policy until the *defects date* the *Contractor* shall submit to the *Project Manager* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with this contract.
- 86.2 The Parties shall comply with the terms and conditions of the insurance policies.
- 86.3 Any amount not recovered from an insurer (including, excesses or deductibles) shall be borne by the *Employer* for events which are at its risk and by the *Contractor* for events which are at its risk.
- 86.4 In the event of the insolvency of an insurer of either Party, the insuring Party shall inform the other Party forthwith on becoming aware thereof and shall submit documentary evidence of alternative insurance to the other Party for acceptance.
- 87 If the *Contractor* does not insure**

87.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable *expenses* incurred by the *Employer* in respect of taking out such insurance) to the *Employer* shall be paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

88 Insurance by the *Employer*

88.1 The *Project Manager* shall submit policies and certificates for insurances to the *Contractor* for acceptance before the Contract Date and afterwards as the *Contractor* instructs. The *Contractor* shall accept the policies and certificates if they comply with this contract.

88.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.

88.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* shall be paid by the *Employer*.

88.4 The *Contractor* shall cooperate with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and shall comply with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require

88.5 The *Contractor* shall comply, and shall ensure that its subcontractors and sub-consultants comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.

88.6 The *Contractor* shall not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.

9 TERMINATION

90 TERMINATION AND SUSPENSION

90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works it shall notify the *Project Manager* and the other Party giving details of its reason for terminating. The *Project Manager* shall issue a termination certificate to both Parties promptly if the reason complies with this contract.

90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount Due
The <i>Employer</i>	A reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R10, R11, R13-R15, R18	P1, P2 and P3	A1 and A3
	R17, R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25 and R25B	P1 and P4	A1, A2 and A5
	R25A	P1, P2 and P3	A1 and A3
The <i>Contractor</i>	R16 or R19	P1 and P4	A1, A2 and A4
	R17	P1 and P4	A1 and A2
	R21A and R25B	P1 and P4	A1, A2 and A5

90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.

90.4 Within thirteen (13) weeks of termination, the *Project Manager* shall certify a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment shall be made within three (3) weeks of the *Project Manager's* certificate or (where payment is due to the *Contractor*) within three (3) weeks of receipt of the VAT invoice. Within one (1) week of issue of the payment certificate the *Contractor* shall deliver to the *Employer* a VAT invoice in the amount of the certificate.

- 90.5 After a termination certificate has been issued, the *Contractor* shall not do any further work necessary to Provide the Works, other than all work necessary for the protection of people or property or for the safety and security of the Works and/or the Site.

91 Reasons for Termination

- 91.1 The *Employer* may terminate the *Contractor's* obligation to Provide the Works or part thereof by notifying the *Contractor* if the *Contractor* is subject to an event of Insolvency. (R10).
- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four (4) weeks of the notification:
- 91.2.1 substantially failed to comply with its obligations (R11), or
 - 91.2.2 not used
 - 91.2.3 appointed a Subcontractor for substantial work before the *Employer* has accepted the Subcontractor pursuant to clause 26.2 or the subcontract conditions pursuant to clause 26.4 (R13).
- 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four (4) weeks of the notification:
- 91.3.1 substantially hindered the *Employer* or Others (R14), or
 - 91.3.2 substantially broken a health or safety regulation or requirement of this contract (R15).
- 91.4 Save where the *Employer* has complied with clause 51.7, the *Contractor* may terminate its obligation to Provide the Works or part thereof by notifying the *Employer* if the *Employer* has not paid an amount due by the final date for payment due to the *Contractor* within eleven (11) weeks of the issue of a notice by the *Contractor* to the *Employer* that payment is overdue and provided that the *Employer* has not paid the amount due within that period (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen (13) weeks:

- 91.6.1 the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- 91.6.2 the *Employer* may terminate if the instruction was due to any other reason (R20).
- 91.7 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within 26 weeks the *Contractor* may give notice to the *Project Manager* copied to the *Employer* requiring the *Employer* to state in writing within fourteen (14) days whether it intends to resume the Works or to terminate the *Contractor's* obligation to Provide the Works. If the *Employer* does not provide a written statement of its intention within fourteen (14) days of the *Contractor's* first notice the *Contractor* may serve a second notice of termination and the *Contractor's* obligation to Provide the Works will terminate after the *Contractor's* second notice (R19).
- 91.8 The *Employer* may terminate if an event occurs which:
- 91.8.1 stops the *Contractor* completing the Works, or
- 91.8.2 stops the *Contractor* completing the Works by the date shown on the Accepted Programme and is forecast to delay Completion by more than thirteen (13) weeks,
- and which
- 91.8.3 neither Party could prevent, and
- 91.8.4 an experienced and prudent contractor familiar with works similar to the Works and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for it to have allowed for it (R21).
- 91.9 The *Employer* may terminate the *Contractor's* appointment in the event of:
- 91.9.1 a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with its obligations under clause 106 (R22),
- 91.9.2 a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of clause 137 (R23),
- 91.9.3 the *Contractor's* Aggregate Liability Cap under this contract has been exceeded (R24),

91.9.4 the *Employer* not obtaining any necessary funding for the *Project* and / or the necessary funding is curtailed (R25),

91.9.5 a Change of Control (R25A).

91.10 If the Project Manager believes that, acting impartially, reasonably and objectively, there is a Material Failure then he or she will notify the parties in writing, setting out the key facts and his or her reasons:

- (a) each party shall within 5 days of the notice cause its Senior Representative to prepare and circulate to the other party and the Project Manager a statement setting out its position in relation to the Material Failure;
- (b) the statements prepared by the Senior Representatives shall be passed to and considered by the Chief Executive Officer of TFW and the Managing Director of the Contractor (the "Executives") who shall meet as soon as practical and in any event within 20 days of the Project Manager's notice and shall, acting in good faith, use their best endeavours to resolve the Material Failure;
- (c) if the Executives agree upon a resolution of the Material Failure, a statement setting out the terms of the resolution shall be signed and the parties shall procure that the resolution is promptly carried into effect;
- (d) if the Executives fail to resolve the Material Failure at their meeting then either party may within 5 days notify the other of its intention to refer the Material Failure to mediation ("Mediation Notice"). Such Mediation Notice shall invite the other party to concur in the appointment of a mediator who shall be a solicitor, barrister or arbitrator of not less than 10 years standing (the "Mediator"). If the parties are unable within 5 days of receipt of the Mediation Notice to agree to the identity of the Mediator, either party may make an application to the Centre for Effective Dispute Resolution to nominate a Mediator;
- (e) If the mediation process referred to above results in the parties agreeing a resolution of the Material Failure, a statement setting out the terms of the resolution shall be signed and the parties procure that the resolution is promptly carried into effect;
- (f) if:
 - a. neither party serves a Mediation Notice on the other within the period set out in clause 91.10 (d); or

- b. if the Material Failure is referred to mediation but the parties fail to agree an acceptable resolution of the Material Failure during the mediation

then either party may within 21 further days terminate this contract by serving on the other party twenty days' notice in writing (R25B).

"Material Failure" means a break down in the parties' relationship with regard to this contract which a reasonable person would consider to be (i) material and (ii) sufficiently serious as to require resolution at a senior level and (iii) if not resolved to the reasonable satisfaction of the parties would naturally result in the termination of this contract

- 91.11 In the event that any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union:

- 91.11.1 the *Employer* shall notify the *Project Manager* and the *Contractor* in writing as soon as reasonably practicable of the declaration or order, the *Project Manager* shall issue a termination certificate to both Parties certifying the date the contract became or is to become ineffective or shortened, and

- 91.11.2 the contract is deemed for all purposes to have been terminated by the *Employer* on the date named in the termination certificate (R26).

Notwithstanding the declaration or order, the provisions of clauses 90 - 93 shall continue in full force and effect along with any other provisions of this contract necessary to give effect to them. In addition, any provisions of the contract which by their nature or implication are required to regulate, determine or limit the Parties' rights and liabilities that have accrued at the date the contract became ineffective or shortened shall survive the declaration or order as aforesaid.

- 91.12 The *Contractor* may terminate if an event occurs which:

- 91.12.1 stops the *Contractor* completing the Works, or

- 91.12.2 stops the *Contractor* completing the Works by the date shown on the Accepted Programme and is forecast to delay Completion by more than twenty six (26) weeks,

and which

91.12.3 neither Party could prevent, and

91.12.4 an experienced and prudent contractor familiar with works similar to the Works and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for it to have allowed for it (R21A).

92 Procedures on Termination

92.1 On termination, the *Employer* may complete the Works and may use any Plant and Materials to which it has title and the *Employer* may appoint a third party contractor (at its absolute discretion) to complete the Works on its behalf. If so requested in writing following termination, the *Contractor* shall, at the *Employer's* expense, give the *Employer* all information, drawings, documents, models, computer programmes, software, manuals and all other items of any kind whatsoever relating to the Works in the *Contractor's* control, custody or possession as soon as reasonably practicable. (P1).

92.2 On termination the *Employer* may require the *Contractor* to assign the benefit of and / or enter into a novation agreement in the form set out in Appendix 3 to this Contract novating any sub-consultancy or other contract related to performance of the Works or relevant part thereof to the *Employer*.

92.3 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the reasonable satisfaction of the *Project Manager*.

92.3.1 P2 The *Project Manager* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of and / or enter into a novation of any subcontract or other contract related to performance of this contract to the *Employer*.

92.3.2 P3 The *Employer* may use or allow any other person to use any Equipment to which the *Contractor* has title to complete the Works. The *Contractor* promptly removes the Equipment from Site when the *Project Manager* notifies the *Contractor* that the *Employer* no longer requires it to complete the Works.

92.3.3 P4 The *Contractor* leaves the Site and removes the Equipment from the Working Areas unless otherwise instructed by the *Project Manager*.

93 Payment on Termination

93.1 The amount due on termination includes (A1):

93.1.1 an amount due assessed as for normal payments,

93.1.2 the Defined Cost for Plant and Materials:

(a) within the Working Areas, or

(b) to which the *Employer* has title and of which the *Contractor* has to accept delivery,

93.1.3 other Defined Cost reasonably incurred in expectation of completing the whole of the Works,

93.1.4 any amounts retained by the *Employer* in accordance with the provisions of this contract, and

93.1.5 a deduction of any un-repaid balance of an advanced payment.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

93.2.1 A2 The forecast Defined Cost of removing the Equipment.

93.2.2 A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the Works.

93.2.3 A4 The *fee percentage* applied to any excess of the Fee Target at the DOV Date over the Price for Work Done to Date less the Fee.

93.2.4 A5 The amount which is equal to 4% of any excess of the Fee Target at the DOV Date over the Price for Work Done to Date less the Fee at the date of termination.

93.3 Not used

93.4 Not used

93.5 Except as set out in this clause 93, neither Party shall be liable to the other Party for any other:

93.5.1 costs, *expenses*, disbursements or losses,

93.5.2 loss of profits, loss of fees, loss of chance or other similar losses, or

93.5.3 indirect losses or consequential losses,

arising out of termination of the *Contractor's* engagement under this contract.

94 Suspension

94.1 The *Employer* may at any time instruct the *Contractor* to suspend progress of part or all of the Works and during such suspension, the *Contractor* shall (where applicable) protect, store and secure such part of the Works against any deterioration, loss or damage.

94.2 Without prejudice to any other provision of this contract a suspension under clause 94.1 shall be treated as a compensation event within the meaning of clause 60.

94.3 In the event of a suspension under Clause 94.1 the *Contractor* shall take all reasonable steps to avoid and / or mitigate the costs arising from such suspension whilst nevertheless complying with its obligations under this contract.

94.4 If a suspension under clause 94.1 continues for a period of 26 weeks the *Contractor* may give notice to the *Employer*, simultaneously to the *Project Manager*, requiring the *Employer* to state in writing within fourteen (14) days of the notice whether it intends to resume the Works or to terminate the *Contractor's* obligation to provide the Works. If the *Employer* does not provide a written statement of its intention within fourteen (14) days of the *Contractor's* first notice the *Contractor* may serve a second notice upon the *Employer*, simultaneously to the *Project Manager* stating that the *Contractor's* obligation to provide the Works will terminate fourteen (14) days after the *Contractor's* second notice.

95 Contract Warning Notice

Without prejudice to the other rights or remedies of the *Employer*:

95.1.1 If at any time the *Contractor* has committed any breach of its material obligations under this contract,

95.1.2 if the *Contractor* has failed to provide a Remedial Plan where required by this contract,

95.1.3 if the *Contractor* has materially failed to implement or comply with a Remedial Plan that has been approved by the *Employer*, or

95.1.4 not used

95.1.5 upon the *Employer* having the right to terminate this contract under clause 90,

then the *Employer* may, but is not obliged to, give a written notice to the *Contractor* setting out

the matter or matters giving rise to such notice (a "Contract Warning Notice").

95.2 Each Contract Warning Notice issued by the *Employer* shall state on its face that it is a Contract Warning Notice and shall specify the following:

95.2.1 the relevant provisions from clause 95.1 of this contract upon which the *Employer* relies as its basis for issuing the Contract Warning Notice,

95.2.2 the term or terms of this contract that the *Contractor* has contravened (each a "Relevant Term"), and

95.2.3 the Remedial Plan Period within which the *Employer* requires the *Contractor* to provide an appropriate Remedial Plan. Where not specified within the Contract Warning Notice or where a Remedial Plan is submitted by the *Contractor* in advance of any Contract Warning Notice, the Remedial Plan Period shall be seven (7) days.

95.3 Following issue of a Contract Warning Notice, the *Contractor* shall submit a Remedial Plan to the *Employer* within the Remedial Plan Period for approval by the *Employer*.

95.4 Each Remedial Plan shall set out:

95.4.1 each Relevant Term which has caused such Remedial Plan to be required,

95.4.2 an explanation of the reasons for the contravention or likely contravention of each Relevant Term,

95.4.3 the steps proposed for the purposes of securing or facilitating compliance with each Relevant Term, and

95.4.4 the time period within which the *Contractor* proposes to implement those steps.

95.5 The *Employer* shall not withhold its approval of a Remedial Plan unreasonably and shall notify the *Contractor* if it accepts or rejects the Remedial Plan within seven (7) days of receipt of the Remedial Plan from the *Contractor* or such other period as the Parties may agree. If the *Employer* does not approve the Remedial Plan it shall inform the *Contractor* of its reasons and the *Contractor* shall take such reasons into account in the preparation of an amended Remedial Plan, which shall be resubmitted to the *Employer* within seven (7) days of the rejection of the first Remedial Plan by the *Employer*.

95.6 Following approval of the Remedial Plan by the *Employer*, the *Contractor* shall (at its own cost) implement and comply with the approved Remedial Plan in accordance with its terms.

95.7 The *Employer* may at its sole discretion withdraw a Contract Warning Notice where the

Contractor has complied with the relevant Remedial Plan or, where no such Remedial Plan has been agreed, where the *Employer* is satisfied that the *Contractor* has demonstrated that the contravention is no longer subsisting and the *Contractor* is performing (or capable of performing) its obligations under this contract. In the event of a Contract Warning Notice being withdrawn such Contract Warning Notice shall be disregarded from the date of such withdrawal and shall not count towards the number of Contract Warning Notices issued for the purposes of clause 95.9.

- 95.8 Without prejudice to the other rights or remedies of the *Employer* under this contract, in the event of a material failure by the *Contractor* to implement or comply with the Remedial Plan the *Employer* may issue a further Contract Warning Notice to the *Contractor* concerning such failure.
- 95.9 The *Employer* may terminate the *Contractor's* obligations under this contract or part thereof by giving no fewer than fourteen (14) days' notice in writing to the *Contractor* to that effect if:
- 95.9.1 three (3) Contract Warning Notices are issued by the *Employer* in any twelve (12) month rolling period; or
- 95.9.2 two (2) Contract Warning Notices are issued by the *Employer* in any three (3) month rolling period.

10 ADDITIONAL CONDITIONS OF CONTRACT

100 CONTRACTOR WARRANTY

100.1 The *Contractor* shall provide, within fourteen (14) days of receipt of a request from the *Project Manager*, deeds of collateral warranty in substantially the form set out at Appendix 4 of this contract or as may reasonably be amended by the *Employer* in favour of:

100.1.1 the Welsh Ministers and/or any party in which the Welsh Ministers has a controlling interest such as Transport for Wales and/or the operator of last resort which warranty shall include step-in rights;

100.1.2 Amey Keolis Infrastructure / Seilwaith Amey Keolis Limited and/or any replacement or alternative Infrastructure Manager for the network forming part of or connecting to the Works;

100.1.3 any other party with a freehold or leasehold interest in property in respect of which the Works form part from time to time before the *end of liability date*;

100.1.4 any party contracted by the above to operate and/or maintain property in respect of which the Works form part from time to time before the *end of liability date*

100.1.5 any funder with an interest in property in respect of which the Works form part from time to time before the *end of liability date*.

101 Key Subcontractor Collateral Warranties

101.1 The *Contractor* shall procure that, on the date the relevant subcontract is entered into, the relevant Key Subcontractor shall execute and deliver to the *Project Manager*, a deed of warranty in substantially the form set out in Appendix 5 of this contract in favour of:

101.1.1 the *Employer*;

101.1.2 persons providing finance in connection with (including any security agent or trustee) the Works;

101.1.3 purchasers and tenants of the whole or any part of the Works;

101.1.4 developers having or acquiring an interest in the whole or part of the Works;

101.1.5 other Beneficiary; or

101.1.6 TIWRL.

If the *Contractor* is unable to procure and deliver to the *Employer*, any requisite deed of warranty in the appropriate form on the date the subcontract is entered into, the *Contractor*, without prejudice to the *Employer's* rights and remedies, consults with the *Employer* as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the *Employer's* interests.

102 Not Used

103 Manufacturer's Warranties

- 103.1 The Contractor undertakes to procure, where available, warranties from the suppliers / manufacturers of the Plant and Materials for permanent incorporation into the works listed within the Works Information. Warranties shall be for no fewer than twenty four (24) months from the completion date. Warranties shall be provided in the suppliers / manufacturers usual market terms. In the event suppliers / manufacturers cannot / will not supply the required warranties the Contractor shall notify the Project Manager at their earliest opportunity. Where relevant and listed in the Works Information.

104 FAILURE TO PROVIDE WARRANTIES

- 104.1 If the *Contractor* fails to provide or procure the manufacturer's warranties validly requested by the *Employer* under clause 103.1, within fourteen (14) days of a request by the *Employer*, the *Employer* shall be entitled to set off or withhold from any sums due to the *Contractor* a sum not exceeding twenty five per cent (25%) of the Price for Work Done to Date, where such monies relate to any element of the Works for which the provider of the warranty is responsible.

105 'FEE TARGET' AND 'FEE PERCENTAGE' ADJUSTMENT

- 105.1 The Fee Target shall only be adjusted in accordance with clauses 60 to 65 and this clause 105.
- 105.2 The Fee Target (and the *Contractor's* entitlement to payment of Fee) shall be adjusted to reflect the effect of a compensation event assessed in accordance with clause 63 insofar as the effect of the compensation event is to increase the forecast of the Fee Target by a sum equal to or greater than £50,000.
- 105.3 The Fee Target shall not be adjusted to reflect the effect of a compensation event assessed in accordance with clause 63 insofar as the effect of the compensation event is to increase the forecast of the Fee Target by a sum less than £50,000 unless and until the aggregate of the effects on the Fee Target of all such compensation events would, but for the operation of this clause, increase the forecast of the Fee Target by a sum greater than £250,000 in which case the Fee Target shall be adjusted by a sum

calculated by deducting £250,000 from the aggregate of the effects of all such compensation events.

105.4 The *fee percentage* shall be adjusted in accordance with the following:

105.4.1 if Completion of Section One occurs after the Completion Date the *fee percentage* shall be reduced by 0.25% ("KPI1");

105.4.2 if Completion of Section Two occurs before the Completion Date the *fee percentage* shall be increased by 0.125% ("KPI2");

105.4.3 if Completion of Section Three occurs before the Completion Date the *fee percentage* shall be increased by 0.125% ("KPI3");

105.4.4 if Completion of Section Four occurs before the Completion Date the *fee percentage* shall be increased by 0.25% ("KPI4");

105.4.5 if Completion of all Sections occurs before the latest Completion Date for those Sections the *fee percentage* shall be increased by 0.25% ("KPI5"), but should Completion of those Sections occur 2 weeks after such latest Completion Date the *fee percentage* shall be reduced by 0.25%, or by 0.5%, if Completion occurs more than 6 weeks after such latest Completion Date ("KPI6");

105.4.6 if the final Price for Work Done to Date for the whole of the Works (excluding the Fee) is less than 95% of the Fee Target, the *fee percentage* shall be increased by 0.25% ("KPI7"); and

105.4.7 if the final Price for Work Done to Date for the whole of the Works (excluding the Fee) is more than 105% of the Fee Target, the *fee percentage* shall be reduced by 0.25% ("KPI8").

105.5 The parties agree that application of the amended *fee percentages* shall be made in respect of the Fee Target at the date that the effects of the compensation event are agreed or determined pursuant to the Contract and that the operation of the provisions of this clause 105 shall constitute the *Employer's* sole and exclusive remedy in respect of any failure by the *Contractor*, howsoever arising, to achieve Completion of a Section by the relevant sectional Completion Date and/or Completion of the *whole of the works* by the date for Completion of the *whole of the works*.

106. **Safety Breaches**

106.1 The *Contractor* shall not commit any Safety Breach and shall use all reasonable endeavours in carrying out the Works to procure that Subcontractors and Others shall

not commit any Safety Breach.

107. IT Requirements

107.1 The *Contractor* warrants to the *Employer* that:

107.1.1 Neither the functionality nor the performance of:

- a) its work,
- b) any software, electronic or magnetic media, hardware, computer system, application or system forming part of its work,
- c) any part of the railways on which its work is undertaken, or
- d) any part of Network Rail's Network

is affected, made inoperable, difficult or suffers any abnormality by reason of any data-related input or data related processing in or on any part of such software, electronic or magnetic media, hardware or computer system,

107.1.2 Any software, electronic or magnetic media, hardware or computer system used or supplied by the *Contractor* in connection with this contract:

- a) is Euro compliant, and
- b) is compliant with the *Employer's* selected Open Document Format which promotes collaboration and the sharing of documents,

107.1.3 Does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the *Employer* and / or Others on which it is used or with which it interfaces or comes into contact, and

107.1.4 Any variations, enhancements or actions undertaken by the *Contractor* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Contractor's* compliance with this warranty.

108. Employer's Business

- 108.1 The *Contractor* acknowledges that it:
- 108.1.1 has sufficient information about the *Employer* and the Works, and
 - 108.1.2 is aware of the *Employer's* processes and business, and
 - 108.1.3 has made all appropriate and necessary enquiries to enable it to Provide the Works, and
 - 108.1.4 is aware of the purposes for which the Works are required and acknowledges that the *Employer* is reliant upon the *Contractor's* expertise and knowledge in Providing the Works, and
 - 108.1.5 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Contract due to any misrepresentation or misunderstanding by it of any fact relating to the Works.

109. **Performance Reviews**

- 109.1 The Parties shall hold performance meetings at a time and location to be notified to the *Contractor* by the *Project Manager*. The *Contractor* shall ensure that the representatives of the *Contractor* who attend shall include such directors and / or senior managers of the *Contractor* as the *Project Manager* shall require. The *Contractor*, the *Employer* and the *Project Manager* shall discuss any ways in which the performance of the *Contractor* may be improved.

110. **Not used**

111. **Design**

- 111.1 As part of the Works, the *Contractor* shall design those elements of design and enhancements set out in the Works Information.
- 111.2 The *Contractor* shall develop and complete the design as specified in the Works Information.
- 111.3 When undertaking the Design the *Contractor* must produce all documentation, presentations, samples or models necessary to support any submission to the *Employer* and to any external Stakeholders, Statutory Undertakers or approval Authorities to whom the *Employer* has an obligation to consult or seek approval.
- 111.4 When undertaking the Design, the *Contractor* shall achieve the standard and detail of design and produce the design deliverables stated within the Works Information.
- 111.5 The *Contractor* acknowledges that the design it produces in relation to the Project will

be relied upon by Others in carrying out their design and performing their works in relation to the Project.

112. Design Integration and Coordination

112.1 When undertaking any Design in relation to the Works, the Contractor shall ensure that such Design is integrated and coordinated with any design prepared or being prepared for the Programme by Others in accordance with the Works Information and Instructions of the Project Manager, and where necessary to Provide the Works.

112.2 The Contractor shall keep the Project Manager informed of all material aspects of the Works and provide the Project Manager with such information and comments as it may from time to time require with regard to the Works promptly and in good time so as not to delay or disrupt the progress of the Works or cause the Employer to be in breach of any obligation to a third party, any applicable law or Statutory Requirement.

112.3 The Contractor in Providing the Works warrants, undertakes and represents to the Employer as a condition of this contract that the Works (including any design and / or specification prepared as part of the Works) will:

112.3.1 be in accordance with the Works Information and any performance or output specification or requirements contained or referred to in this contract,

112.3.2 comply with all Statutory Requirements,

112.3.3 comply with all applicable law,

112.3.4 comply with all relevant Standards,

112.3.5 subject to clause 21.1, be integrated with the designs of Others, and

112.3.6 subject to clause 21.1, the Contractor further warrants, undertakes and represents to the Employer as a condition of this Contract that any design and / or specification prepared by the Contractor in the course of Providing the Works will not on Completion render the Works incapable of being Available.

112.4 The Contractor shall submit the particulars of its design as the Works Information requires to the Project Manager for acceptance.

112.5 Within four (4) weeks (or such longer period as may be agreed between the Parties) of the Contractor submitting the particulars of design referred to in clause 112.4 to it for acceptance, the Project Manager either accepts the particulars of the Contractor's design or notifies the Contractor of its reasons for not accepting it. Reasons for not accepting the Contractor's design are that:

- 112.5.1 it does not comply with the Works Information,
 - 112.5.2 it does not comply with the applicable law, Standards or Statutory Requirements,
 - 112.5.3 It is not integrated and coordinated with the designs of Others where the Contractor is required by the Works Information or instructions of the Employer to integrate and / or co-ordinate its design with the designs of Others, or such integration is necessary for the Contractor to Provide the Works,
 - 112.5.4 it does not comply with this Contract,
 - 112.5.5 it is such that it will not allow the Works to be constructed in accordance with this Contract,
 - 112.5.6 it is such that if constructed the Works will not be Available, or
 - 112.5.7 It is not in a format which is accepted for use by the Employer.
- 112.6 The Contractor must not provide the Design to Others until the Project Manager has accepted the same.
113. **Comply with Risk Management Plan**
- 113.1 The Risk Register, or any revision to the Risk Register or any matter agreed or discussed at a risk reduction meeting, shall comply with the Risk Management Plan set out in the Works Information unless the *Project Manager* gives the *Contractor* an instruction stating how the arrangements to be made and / or taken by the *Contractor* in accordance with the Risk Management Plan are to be modified.
114. **Design Check Certificate**
- 114.1 Where required by the Works Information all designs prepared by the *Contractor* and submitted to the *Project Manager* shall be supported by a design check certificate in the form attached to the Works Information signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Contractor*, he or she is a Subcontractor.
115. **Single point Design Responsibility**
- 115.1 In this clause 115, "Employer's Design Information" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Works Information

excluding the *warranted design documents*.

- 115.2 The Contractor is deemed to have scrutinized and is fully responsible in all respects for the design of the Works including, without limitation, any Employer's Design Information (which, for all purposes of this contract is deemed to be part of the Contractor's design.
- 115.3 Where there is a mistake, inaccuracy or discrepancy in the Employer's Design Information, the Contractor shall inform the Project Manager in writing of its proposed amendment to remove the mistake, inaccuracy or discrepancy. The Project Manager may consent to the Contractor's proposed amendment or comment in writing on such an amendment. The Contractor shall take account of such comments and resubmit its proposed amendment to the Project Manager. Such process shall be repeated until the Project Manager accepts the Contractor's proposed amendment.
- 115.4 Not Used
116. Not Used
117. Not Used
118. **Collaborative Working**
- 118.1 In carrying out the Works the Contractor shall work in a collaborative manner with the Employer, the Project Manager, the Supervisor, the InfraCo, any other consultants engaged by the Employer, and stakeholders and Others.
- 118.2 The Contractor shall coordinate its activities with those of Others as required by the Works Information and in accordance with the instructions of the Project Manager, the Supervisor and the Employer.
- 118.3 The Contractor shall cooperate with the Employer and Others in obtaining and providing information which they need in connection with their works and the Works.
- 118.4 Where necessary to Provide the Works, the Contractor shall hold or attend meetings with Others. The Contractor shall inform the Project Manager of these meetings beforehand and the Project Manager and the Employer may attend them.
- 118.5 The Contractor shall Provide the Works and correct Defects in such a way as not to cause delay or disruption to the Employer and / or Others. In the event that Providing the Works or correcting the Defects causes delay or disruption to the Employer and / or Others, the Contractor shall take all reasonable steps to mitigate and minimise such delay or disruption.

119. Not Used

120. **Sectional Completion**

120.1 In these Conditions of Contract, unless stated as the whole of the Works, each reference and clause relevant to:

120.1.1 the Works,

120.1.2 Completion, and

120.1.3 the Completion Date,

applies, as the case may be, to either the whole of the Works or any section of the Works.

121. **Project Bank Account**

121.1 The *Contractor* shall establish the Project Bank Account with the project bank within three (3) weeks of the date of the transfer or novation pursuant to clause 123 and the agreement that a Project Bank Account be provided. The Contract Data shall be updated to reflect the implementation of a Project Bank Account at or around the time of the transfer or novation.

121.2 Unless stated otherwise in the Contract Data, the *Contractor* shall pay any charges made and shall be paid any interest paid by the project bank. The charges and interest by the project bank shall not be included in the assessment of the amount due.

121.3 The *Contractor* shall submit to the Project Manager for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* shall provide to the Project Manager copies of communications with the project bank in connection with the Project Bank Account.

Named Suppliers

121.4 The *Contractor* shall include in its contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account the Trust Deed. The *Contractor* shall notify the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

121.5 The *Contractor* shall submit proposals for adding a Supplier to the Named

Suppliers to the Project Manager for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Scope. The Employer, the *Contractor* and the Supplier shall sign the Joining Deed after acceptance.

Payments

- 121.6 The *Contractor* shall include with its invoice at each assessment date a statement of the amounts due to Named Suppliers in accordance with their contracts.
- 121.7 Within the time set out in the banking arrangements to allow the project bank to make payment to the *Contractor* and Named Suppliers in accordance with the contract,
- 121.7.1 the Employer shall make payment to the Project Bank Account of the amount which is due to be paid under the contract and
- 121.7.2 the Contractor shall make payment to the Project Bank Account of any amount which the Employer has notified the Contractor it intends to withhold from the Contractor's invoice and which is required to make payment in full to Named Suppliers.
- 121.8 The *Contractor* shall prepare the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of the payment due under the contract. After signing the Authorisation, the *Contractor* shall submit it to the Employer no later than four (4) days before the final date for payment. The Employer shall sign the Authorisation and submit it to the project bank no later than one (1) day before the final date for payment.
- 121.9 The *Contractor* and Named Suppliers shall receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
- 121.10 A payment which is due from the *Contractor* to the Employer is not made through the Project Bank Account.

Effect of Payment

- 121.11 Payments made from the Project Bank Account are treated as payments from the Employer to the *Contractor* in accordance with this contract or from the *Contractor* or Subcontractor to Named Suppliers in accordance with their contract as applicable. A delay in payment due to a failure of the *Contractor* to comply with the requirements of this clause is not treated as late payment under this contract.

Trust Deed

- 121.12 The *Employer*, the *Contractor* and Named Suppliers shall sign the Trust Deed before the first assessment date.

Termination

- 121.13 If either Party notifies the other of termination, no further payment shall be made into the Project Bank Account.

122. Change in Law

- 122.1 A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the Works and exercising the Required Standard ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The Project Manager may notify the Contractor of a compensation event for such a change in the law and instruct it to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the Fee Target, the Prices are reduced.

- 122.2 For the avoidance of doubt, a change in law arising as a result of the UK Government giving notice of its intention to leave the European Union under clause 2 of Article 50 of the Treaty of Lisbon (2007/C306/01) and/or Brexit); and/or tariffs and/or import duties arising as a result of the UK Government giving notice of its intention to leave the European Union under clause 2 of Article 50 of the Treaty of Lisbon (2007/C306/01) and/or Brexit, is a compensation event if it occurs after the Contract Date.

123. Assignment

- 123.1 The Contractor shall not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the Employer.

- 123.2 Not used.

- 123.3 The Employer may transfer or novate this contract without the prior consent of the Contractor to:

123.3.1 the Welsh Ministers and/or any party in which the Welsh Government shall have a controlling interest such as Transport for Wales or the operator of last resort;

123.3.2 InfraCo.

123.3.3 TfWRL.

the transferee assuming all the liability and obligations of the Employer under the Contract and the Contractor shall use all reasonable endeavours to facilitate and ensure that the transfer or novation of the contract is effectuated along with any additional performance security and / or Project Bank Account as may be agreed between the Parties.

123.4 Following Completion of the Works the Employer may assign, transfer, charge all or any rights under or arising out of this contract to

123.4.1 the Welsh Ministers and/or any party in which the Welsh Government shall have a controlling interest such as the operator of last resort;

123.4.2 InfraCo or TfWRL and/or any replacement or alternative Infrastructure Manager for the network forming part of or connecting to the Works;

123.4.3 any other party with a freehold or leasehold interest in property in respect of which the Works form part from time to time before the *end of liability date*;

123.4.4 any party contracted by any of the above to operate and/or maintain property in respect of which the Works form part from time to time before the *end of liability date*

123.4.5 any funder with an interest in property in respect of which the Works form part from time to time before the *end of liability date*;

123.4.6 a subsidiary or other associated companies within the same group of companies as one or more of the above so long as that assignee company remains within the same group of companies as one or more of the above;

123.5 and the Parties shall do all things necessary to give effect to this clause 123.3. The Employer shall use all reasonable endeavours to provide prior written notice to the Contractor of any change in assignment no less than fourteen (14) days prior to such assignment but for the avoidance of doubt, any failure to give such notice shall not affect the validity of such assignment.

124. **Sustainable Development Plan**

124.1 The Contractor shall provide a Sustainable Development Plan to the Employer at the Contract Date.

124.2 The Contractor shall implement in full the Sustainable Development Plan within the timescales set out in the Sustainable Development Plan. Reference to the "Sustainable Development Plan" is to the latest version incorporating all accepted modifications at the relevant time.

- 124.3 The Contractor shall keep the Sustainable Development Plan under review throughout the term of this contract and shall modify it as appropriate to better achieve the community benefits it seeks to achieve. Modifications of the Sustainable Development Plan shall be discussed with the Employer and the Project Manager and submitted to the Project Manager for acceptance. A reason for not accepting a modification is that it is not reasonable in the light of the then current circumstances and the commitments contained in the current Sustainable Development Plan (before the proposed modification) or the community benefits it seeks to achieve.
- 124.4 The Contractor shall provide reports to the Project Manager quarterly from the Contract Date in the form specified by the Project Manager setting out progress and achievements against the Sustainable Development Plan and in particular against any key performance indicators set out in the Sustainable Development Plan or as agreed from time to time between the Contractor and the Project Manager. The Contractor shall also provide such reasonable additional information as the Project Manager may reasonably require to establish to what extent the Sustainable Development Plan is being achieved.
- 124.5 Failure by the Contractor to provide the reports or information required under clause 124.4 within two (2) weeks of the due date shall entitle the Employer to set off or withhold from any sums due to the Contractor a sum not exceeding twenty five per cent (25%) of the Price for Work Done to Date, until the relevant report and / or information is provided.
125. **Not Used**
126. **Disputes Applicable Law and Jurisdiction**
- 126.1 Any dispute or difference between the Parties on any matter or thing of whatsoever nature arising under this contract or in connection therewith concerning the Contractor (a "Dispute") shall be resolved pursuant to the dispute resolution procedure set out in Appendix 6 (Dispute Resolution).
- 126.2 This contract shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.
- 126.3 In the event of a difference or Dispute arising between the parties in relation to or in connection with this contract the parties will endeavour in the first instance to meet to discuss such differences or dispute at a senior level with a view to reaching an amicable resolution.
- 126.4 Notwithstanding clause 126.1 the Parties each have the right to refer a Dispute arising under or in connection with this contract to adjudication, and either party may at any

time give to the other notice in writing of its intention to do so. Any information submitted by the referring party to the adjudicator shall be copied at the same time to the other party. The adjudication shall be conducted under the TeCSA Adjudication Rules thereby incorporating the TeCSA Adjudication Rules into this contract.

126.5 Subject to the above, the Parties irrevocably agree that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Employer directs that the High Court in London (or elsewhere) should have jurisdiction) to determine any disputes which may arise out of or in connection with this contract or its or their subject matter or formation (including non-contractual disputes or claims).

126.6 Unless the Employer determines or suspends the operation of this Contract the Contractor shall be obliged to continue to perform its obligation under this contract during the course of any Court proceedings.

127. Fee

127.1 No fee shall be payable by the *Employer* to the *Contractor* in relation to any obligations or duties on the part of and to be performed by the *Contractor* under this contract save for the Works instructed in writing in accordance with this contract.

128. Not Used

129. Modern Day Slavery

129.1 The Contractor shall ensure that it and its supply chain shall comply with the obligations of the Modern Day Slavery Act 2015.

129.2 The Contractor shall maintain its own policies and procedures to ensure its compliance with the Modern Day Slavery Act 2015 which shall be made available to the Employer upon request.

129.3 The Contractor shall notify the *Employer* as soon as it becomes aware of:

129.3.1 any breach or potential breach of the *Contractor's* policies under clause 129.2,
or

129.3.2 any actual or suspected slavery or human trafficking occurring in connection with the Works.

130. Building Information Modelling ("BIM")

130.1 The requirement for BIM (or any updated version or replacement of BIM in use from time to time) is set out in the Works Information.

131. **Statutory Undertakers**

131.1 The *Contractor* shall comply with the special requirements of relevant suppliers of utilities acting as Statutory Undertakers which shall include the following:

131.1.1 electricity,

131.1.2 gas,

131.1.3 water,

131.1.4 telecommunications, and

131.1.5 Others.

131.2 The *Contractor* is responsible for determining the requirements of Statutory Undertakers and for complying with the same.

132. **Data and Information**

132.1 Any data or information received at any time by the *Contractor* from the *Employer* or Others shall not relieve the *Contractor* from its responsibility for the Works it undertakes under this contract.

133. **Warranties and Undertakings**

133.1 The *Contractor* warrants and undertakes to the *Employer* as a condition of this contract that:

133.1.1 it has all the resources including financial, technical and human resources as are required to carry out and complete the Works in accordance with this contract,

133.1.2 all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,

133.1.3 the Works will be carried out using only materials and goods which are of sound and good quality and that it will only specify substances and materials for incorporation in the Works and the Project which are in accordance with clause 27.10 of this contract and the requirements of the Works Information, and the *Contractor* further warrants that it shall not specify or approve any products or materials which are not in compliance with clause 27.10 of this contract. This clause does not create any additional duty for the *Contractor* to inspect or check the work of Others which is not otherwise required by this contract,

- 133.1.4 the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- 133.1.5 the Plant and Materials will be to the standard expected of a professional contractor experienced in the construction of public transport infrastructure of a similar type, size, scope and complexity to the Project,
- 133.1.6 neither the functionality nor the performance of the Works, or any computer product, application or system forming part of the Works, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- 133.1.7 the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- 133.1.8 it will maintain a supply of the spare parts (including software) necessary for the operation and maintenance of the Works as specified in the Works Information,
- 133.1.9 not used,
- 133.1.10 the Contractor will exercise the Required Standard, and
- 133.1.11 except where information from Others is provided in the Works Information or ground investigation information provided by Others and the Contractor places no reliance on any information received by it from Others and that the Contractor will verify the accuracy of all information from Others before using it in connection with the Works and the Project.

134. Accounts and Records

134.1 In this section Minimum Records means:

- 134.1.1 all necessary information for the evaluation of claims or compensation events, whether or not relating to the Contractor or to any Subcontractors (or sub-subcontractors of any tier),
- 134.1.2 management accounts, information from management, information systems and any other management records,

- 134.1.3 accounting records (in hard copy as well as computer readable data),
 - 134.1.4 contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
 - 134.1.5 original estimates,
 - 134.1.6 estimating worksheets,
 - 134.1.7 correspondence,
 - 134.1.8 compensation event files (including documentation covering negotiated settlements),
 - 134.1.9 schedules including capital works costs, timetable and progress towards Completion,
 - 134.1.10 general ledger entries detailing cash and trade discounts including companywide discounts and rebates,
 - 134.1.11 commitments (agreements and leases) greater than £5,000 (five thousand pounds),
 - 134.1.12 detailed inspection records,
 - 134.1.13 such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the Employer,
 - 134.1.14 accounts and records of the Price for Work Done to Date and all other amounts to be paid to the Contractor under this contract,
 - 134.1.15 test and commissioning results, and
 - 134.1.16 reports relating to implementation of the Sustainable Development Plan.
- 134.2 The *Contractor* shall maintain and procure in each subcontract that each of its Subcontractors (and sub-subcontractors of any tier) maintains and retains the Minimum Records for a minimum of fifteen (15) years from Completion with respect to all matters for which the *Contractor* and its Subcontractors are responsible under this contract. The *Contractor* shall procure that each subcontract contains open-book audit rights in favour of the *Employer* and its authorised representatives (including the *Employer's* external auditors).
- 134.3 The *Contractor* undertakes and shall procure that its Subcontractors (and

sub-subcontractors of any tier) undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and its authorised representatives may, from time to time during the performance of this contract and for fifteen (15) years following Completion, audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including any aspect of the *Contractor's* or any Subcontractor's operations, method statements, costs and *expenses*, subcontracts, claims relating to compensation events, and financial arrangements or any document referred to therein or relating thereto and the arrangements made by the *Contractor* or any Subcontractor to comply with its obligations under this clause 134. The *Employer's* rights pursuant to this sub clause 134.3 include the right to audit and check and to take copies of and extracts from any document or record of the *Contractor* or its Subcontractors including Minimum Records.

134.4 The *Contractor* shall promptly provide (and shall procure that its Subcontractors and sub- subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:

134.4.1 granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,

134.4.2 granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,

134.4.3 making any contracts and other documents and records required to be maintained under this contract (including Minimum Records) (whether exclusively or non-exclusively) available for audit and inspection,

134.4.4 providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and / or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and

134.4.5 complying with the *Employer's* reasonable requests for access to staff and senior personnel engaged by the *Contractor* in the performance of this contract or the Project.

134.5 Access may be at any time without notice provided there is good cause for access

without notice and provided that the Employer's authorised representatives shall comply with all reasonable requirements of the Contractor for the purposes of protecting the confidentiality of the information of third parties and no information will be divulged to any third party save in pursuance of statutory obligations.

- 134.6 For the avoidance of doubt this clause 134 is in addition to any legislative requirement or applicable law and does not negate the need for any such retention of records.

135. GDPR and Freedom of information

- 135.1 The *Contractor* at all times shall comply with GDPR and any policies issued by the *Employer* from time to time in relation to the processing of data and shall not by any act or fault cause the *Employer* to be in breach of these requirements.

135.2 The *Contractor*:

135.2.1 shall take appropriate technical and organisational security measures satisfactory to the Employer against breaches of GDPR.

135.2.2 provide the Employer and Project Manager with such information as they may reasonably require to satisfy themselves of compliance by the Contractor with the requirements of this clause 135, and

135.2.3 cooperate with the Employer and Project Manager in complying with requests or enquiries made pursuant to GDPR.

135.3 The *Contractor* acknowledges that the *Employer*:

135.3.1 is subject to requirements under the FOI Legislation and agrees to assist and cooperate with the Employer to enable the Employer to comply with its obligations under the FOI Legislation, and

135.3.2 may be obliged under the FOI Legislation to disclose information without consulting and / or obtaining consent from the Contractor.

135.4 The *Contractor* agrees and shall procure that its Subcontractors will agree to:

135.4.1 transfer to the Employer or such other persons as may be notified by the Employer to the Contractor each Information Request relevant to this contract, that the Contractor or its Subcontractor (as the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request, and

135.4.2 in relation to Information held by the Contractor on behalf of the Employer,

provide the Employer with details about and / or copies of all such Information that the Employer requests and such details and / or copies are provided within six (6) days of a request from the Employer (or such other period as the Employer may reasonably specify), and in such forms as the Employer may reasonably specify.

- 135.5 The *Employer* is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*.

The *Contractor* acknowledges that the *Employer* may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor*.

136. **Nuisance**

- 136.1 Without prejudice to clause 83 the Contractor shall take all reasonable steps to prevent any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the Works and, if the Employer (acting reasonably) considers that the claim should be defended, defends or, if the Employer so elects, shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto.

- 136.2 Without prejudice to the Contractor's obligations under clause 136.1 if the carrying out of the Works is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the Contractor without cost to the Employer shall obtain the prior written agreement of such landowners, tenants or occupiers subject to the approval of the Employer (such approval not to be unreasonably withheld or delayed). The Contractor shall comply (at its own cost) in every respect with the conditions contained in such agreements.

137. **Conflicts of Interest**

- 137.1 The Contractor acknowledges and agrees that it does not have and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Provision of the Works or any member of the Employer, save to the extent fully disclosed to and approved in writing by the Employer.

- 137.2 The Contractor shall undertake ongoing and regular conflict of interest checks

throughout the duration of this contract and in any event not less than once in every six months and notifies the Employer in writing immediately on becoming aware of any actual or potential conflict of interest with the Provision of the Works under this contract or the Employer and works with the Employer to do whatever is necessary (including the separation of staff working on, and data relating to, the Works from the matter in question) to manage such conflict to the Employer's satisfaction, provided that, where the Employer is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

138. **Confidentiality**

138.1 In this clause "Confidential Information" means documents, materials and other information whether technical or commercial supplied by or on behalf of another party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this contract or the Infrastructure Agreement.

138.2 The Contractor acknowledges that during the course of this contract it may receive, obtain, prepare or create Confidential Information.

138.3 The Contractor agrees to:

138.3.1 keep (and ensure that all of its employees and Subcontractors keep) the Confidential Information in strictest confidence and acknowledges that such information is of a proprietary and confidential nature, and

138.3.2 not use (and ensure that all its employees and Subcontractors do not use) the Confidential Information for any purposes whatsoever (and in particular to the detriment of the Employer) other than for the purpose of performing the Works under this contract.

138.4 The Contractor shall not (and shall ensure that its Subcontractors do not) disclose the Confidential Information to any third party without the prior written consent of the Employer except where the Contractor is entitled to the extent strictly necessary to disclose the Confidential Information:

138.4.1 to any Connected Persons provided that such a recipient agrees in writing to be bound by the terms of this confidentiality provision and provided that the Contractor is responsible for any breach of its obligations occasioned by any act or omission of any such Connected Persons, or

138.4.2 to any other person or body having a legal right or duty to know the

Confidential Information in connection with the Contractor's business or performance of the Works provided that prior to such disclosure the Contractor consults with the Employer as to the proposed form of such disclosure.

- 138.5 The Contractor agrees that, pursuant to clause 138.4 above, it shall inform each of the persons to whom Confidential Information is disclosed of the restrictions as to the use and disclosure of the Confidential Information and use its best endeavours to ensure that each of them observe such restrictions.
- 138.6 At the Employer's request, and in any event upon the termination or expiry of the contract, the Contractor shall deliver promptly to the Employer, or destroy as the Employer directs, all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and, if instructed by the Employer in writing, remove all electronically held Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the reformatting of all disks.
- 138.7 The Contractor shall not, except where provided for in clause 138.4 or otherwise only with the prior written consent of the Employer, disclose to any third party the nature or content of any discussions or negotiations between the any of the parties to this contract relating to the Confidential Information.
- 138.8 The obligations set out in clauses 138.4 and 138.7 do not apply to any Confidential Information which:
- 138.8.1 the Contractor shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Contractor by the Employer, or
 - 138.8.2 is lawfully disclosed to the Contractor without any obligations of confidence, by a third party who has not derived it directly or indirectly from the Employer, or
 - 138.8.3 is or has come into the public domain through no fault of the Contractor or its personnel, or
 - 138.8.4 is required by law or by order of a court of competent jurisdiction to be disclosed.
- 138.9 The Contractor acknowledges that damages would not be an adequate remedy for any breach of this clause 138 and that (without prejudice to all other remedies which the Employer may be entitled to as a matter of law) the Employer is entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions

of this clause and no proof of special damages is necessary for the enforcement of the provisions of this clause.

- 138.10 The Contractor agrees that it shall not advertise or announce this contract (or that it is to perform the Works) without the prior written consent of the Employer and the Employer has the right to approve the content and form of any advertisement or announcement before it is made.
- 138.11 Neither the Contractor nor anyone employed by it or acting on its behalf shall give information concerning the Works for publication in the press or on radio, television, screen or any other media without the prior written consent of the Employer and, if such consent is given, the Contractor shall provide to the Employer a full copy of the information to be released and shall not release any such information until the Contractor has received the Employer's prior written consent as to the content of the information to be released. The Contractor shall not, without the prior written approval of the Employer, take or permit to be taken any photographs of the Works for use in any publicity or advertising.
- 138.12 For the avoidance of doubt, the Contractor shall procure that any Connected Persons comply with the provisions of this clause 138 and are responsible to the Employer for any act or omission of any Connected Persons in breach of such obligation.
- 138.13 The Contractor shall notify the Employer promptly if the Contractor becomes aware of any breach of confidence by any Connected Persons and shall give the Employer all assistance the Employer may reasonably require in connection with any proceedings the Employer may bring or other steps the Employer may take against the Connected Persons or any other person for such breach of confidence.
- 138.14 The provisions of this clause 138 continue to apply after termination of expiry of this contract.

139. **Quality Assurance and Best Value**

- 139.1 The *Contractor* shall maintain an effective and economical quality control programme in accordance with the requirements set out in the Works Information. The *Contractor* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* shall assist the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carry out any reviews of the Works reasonably requested by the *Employer* from time to time.

140. **Responsible Procurement**

140.1 The *Contractor* has regard to the responsible procurement principles and complies at all times with the obligations with regard to the responsible procurement principles set out in the Works Information and / or instructed by the *Project Manager* from time to time and / or the responsible procurement rules and requirements set out in this contract. Compliance with such obligations and instructions does not constitute a compensation event unless the *Project Manager* issues an instruction and states in its instruction that it constitutes a compensation event.

141. **Severability**

141.1 If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision is, to the extent required, severed from this contract and is ineffective without, as far as is possible, modifying any other clause or part of this contract and this does not affect any other provisions of this contract which remain in full force and effect. In the event that in the *Employer's* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the *Employer* and the *Contractor* immediately commence good faith negotiations to remedy such invalidity.

142. **Access to Premises**

142.1 Any Premises made available to the *Contractor* in connection with this contract shall be free of charge and shall be used by the *Contractor* solely for the purpose of Providing the Works provided, for the avoidance of doubt, that the *Contractor* is responsible for its own costs or travel including any congestion charging. The *Contractor* shall:

142.1.1 have the use of such Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Premises,

142.1.2 vacate such Premises upon the termination or expiry of the contract or at such earlier date as the Employer may determine,

142.1.3 not exercise or purport to exercise any rights in respect of any Premises in excess of those granted under this clause 142.1, and

142.1.4 ensure that the Contractor's personnel carry any identity passes issued to them by the Employer at all relevant times and comply with the Employer's security procedures as may be notified by the Employer from time to time; and not damage the Premises or any assets on the Premises.

- 142.2 Nothing in this clause 142 shall create or be deemed to create the relationship of landlord and tenant in respect of any Premises between the Contractor and the Employer.
- 142.3 The Employer shall be under no obligation to provide office or other accommodation facilities or services (including telephony and IT services) to the Contractor except as may be specified in the Works Information.
- 142.4 The Contractor shall comply with all of the Employer's security requirements while on Premises, and shall ensure that all of its personnel comply with such requirements.
- 142.5 The Employer reserves the right to refuse to admit to any Premises any of the Contractor's personnel who fail to comply with any of the Employer's policies and standards referred to in this contract.
- 142.6 The Employer reserves the right to instruct any of the Contractor's personnel to leave any Premises at any time for any reason and such personnel shall comply with such instruction immediately.
143. **Compliance with Policies**
- 143.1 The Contractor shall notify its personnel and the Project Manager of any health and safety hazards that exist or that may arise in connection with providing the Works or which the Contractor is aware or ought reasonably to be aware.
- 143.2 The Contractor undertakes that all its personnel and those of its Subcontractors shall comply with all of the Employer's policies and standards that are relevant to Providing the Works, including those relating to occupational health and safety, security, business ethics, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the Employer for personnel working at Premises or accessing the Employer's computer systems. The Employer shall provide the Contractor with copies of such policies on request.
- 143.3 In providing the Works, the Contractor shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (Insofar as the DP's activities may impact on the environment) to the need to:
- 143.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
- 143.3.2 enhance the environment and have regard to the desirability of achieving sustainable development,

143.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest, and

143.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

144. Risk Management Plan

144.1 Any revision to the Risk Register or any matter agreed or discussed at a risk reduction meeting, shall comply with the Risk Management Plan set out in the Works Information unless the *Project Manager* gives the *Contractor* an instruction stating how the arrangements to be made and / or taken by the *Contractor* in accordance with the Risk Management Plan are to be modified.

145. Assurance

145.1 The Contractor shall comply with the Assurance Regime.

145.2 The Assurance Regime may be amended at any time by agreement between the Contractor and the Project Manager.

145.3 In relation to the initiation, development, design, construction, delivery, testing, commissioning and handover of new, refurbished or altered systems and assets, the Contractor prepares Assurance Plans.

145.4 Before the start of specific delivery activities or at defined milestones as appropriate, the Contractor submits an Assurance Plan to the Project Manager and any other regulatory body.

145.5 The Parties consult and confer together in relation to the Assurance Plans after their delivery to the Project Manager. Within thirty (30) days thereafter, the Project Manager may give notice to the Contractor requiring the Contractor to make changes to the Assurance Plans or any elements thereof. The Contractor makes the changes within seven (7) days of receiving the notice.

145.6 The Assurance Plan does not become final until approved by the Project Manager.

145.7 The Parties may agree to update the Assurance Plan as appropriate to take account of any changes to or development of the Works.

145.8 The Contractor complies with the approved Assurance Plan as amended from time to time.

146. Recovery of Sums Due from the Contractor

146.1 Subject to clause 51, when under this contract any sum of money is recoverable from or payable by the *Contractor* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the *Contractor* under this contract.

147. Prohibited Acts and Safety Breaches

147.1 The Contractor shall not and shall use its reasonable endeavours to procure that its Subcontractors (and sub-subcontractors of any tier), agents or employees do not commit any Prohibited Act and / or Safety Breach.

147.2 The Project Manager may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

147.3 If any Prohibited Act and / or Safety Breach comes to the attention of the Contractor in relation to this contract the Contractor notifies the Project Manager by the most expeditious means available. The Contractor shall cooperate with the Project Manager in the investigation of any Prohibited Act and / or Safety Breach and implement any changes in the procedures or working practices employed under the contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such Prohibited Act and / or Safety Breach is minimised.

147.4 If the Contractor, any of its shareholders or any Subcontractor or anyone employed by or acting on behalf of the Contractor or any of its agents commits any Prohibited Act and / or Safety Breach, this constitutes a material breach of this contract and entitles the Employer to terminate the contract in whole or in part with immediate effect in accordance with clause 90 and clause 91.9.

147.5 If a Prohibited Act and / or Safety Breach is committed by an employee of the Contractor or by any Subcontractor (or employee or agent of such Subcontractor) then the Employer may (at its sole discretion) choose to service a warning notice upon the Contractor instead of exercising its right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Contractor removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works and / or services by another person or Subcontractor this constitutes a material breach of this contract and entitles the Employer to terminate the contract in whole or in part with immediate effect in accordance with clause 90 and clause 91.9.

147.6 In the event of any breach of this clause 147 by the Contractor the Employer shall recover from the Contractor any loss liability or damage incurred or suffered as a result

of the breach of this clause by the Contractor.

148. **Gratuities and Gifts**

148.1 The Contractor and its staff in the provision of the Works shall not solicit or accept any gratuity tip or any other form of money taking or reward collection or charge for any part of the Works other than charges properly approved by the Employer in accordance with the provisions of this contract. Failure to comply with this clause 148.1 constitutes a material breach of this contract and entitles the Employer to terminate the contract in whole or in part with immediate effect in accordance with clause 90 and clause 91.9.

149. **Merger or Change of Control**

149.1 The Contractor shall notify the Employer if a Change of Control of the Contractor has occurred or is expected to occur. The Employer may treat the Change of Control as a substantial failure by the Contractor to comply with its obligations.

149.2 The Contractor shall notify the Employer of any change, or proposed change in the name of or status of the Contractor.

150. **Not Used**

151. **Not Used**

152. **Limitation of Liability**

152.1 Save in respect of the excluded matters referred to below and in clause 152.2, the maximum aggregate liability of the *Contractor* to the *Employer* under or in connection with this contract shall not exceed the figure set out in the Contract Data (the "**Aggregate Liability Cap**"). The excluded matters for the purposes of the *Aggregate Liability Cap* are liabilities of the *Contractor* in respect of:

152.1.1 any failure by the *Contractor* to comply with any applicable law and / or Statutory Requirements,

152.1.2 the use by the *Employer* and Others of any IPR provided by or on behalf of the *Contractor* (including any IPR provided by any Subcontractor), including any infringement of any third party's intellectual property rights,

152.1.3 any damage to or loss of any third party property, real and personal, and

152.1.4 any bodily injury, sickness, disease or death, of any person whatsoever.

152.1.5 not used.

- 152.2 Nothing in this contract shall exclude or limit any liability of the *Contractor* in respect of death or personal injury, fraud or illegal acts by the *Contractor*.
- 152.3 Neither Party shall be responsible or held liable to the other Party under contract, tort (including but not limited to negligence), misrepresentation, in debt, by way of reimbursement or under strict liability or other theory of law for any Indirect Loss, except in relation to:
- 152.3.1 any liquidated damages payable by either Party pursuant to the terms of the contract;
 - 152.3.2 any liability arising as a result of fraud;
 - 152.3.3 the liability of either Party pursuant to clause 93 on any termination of the contract;
 - 152.3.4 the liability of either Party to indemnify the other in respect of liability which is incurred to third parties as a result of the operation of law and not only as a result of contractual arrangements entered into with such third parties, and
 - 152.3.5 Not used.
- 152.4 The *Contractor* is not liable to the *Employer* for a matter unless it is the subject of legal proceedings commenced before the *end of liability date*.
- 152.5 Not used
153. **Innovation**
- 153.1 The Contractor shall provide reasonable assistance to, and shall co-operate with, the Employer and the Welsh Government with regard to the Employer and the Welsh Government implementing the Welsh Government Innovation Strategy including implementation of the following programmes:
- 153.1.1 SMART Innovation,
 - 153.1.2 SMART Expertise, and
 - 153.1.3 SMART Cymru.
- 153.2 The Contractor shall, where required, partner and collaborate with the Employer and other organisations (including but not limited to Innovate UK and the RSSB)) and seek third party funding (where appropriate) for new projects that will bring innovative and viable technologies, processes, business models and products to the market.

154. **Small Business Research Initiative**

- 154.1 In delivering the Works, the *Contractor* shall fully and effectively co-operate with, the *Employer* to ensure innovation through the supply chain supporting initiatives such as the Small Business Research Initiative (SBRI).

155. **Open Innovation Programme**

- 155.1 The Contractor shall fully and effectively co-operate with the Employer and Innovate UK Rail Innovation Programme to establish open and collaborative approaches to innovation that creates opportunities for innovative Welsh SMEs & academia.
- 155.2 The Contractor shall fully and effectively co-operate with, the Employer and Innovate UK to utilise the Expertise Wales website to launch challenges and collaborative project opportunities.
- 155.3 The Contractor shall fully and effectively co-operate with, the Employer and Innovate UK to consider the 'Catalogue' of Innovations from Wales and similar "catalogues" produced by RSSB and Innovate UK, and agree a clear plan and timeline for innovation demonstrators as relevant.

156. **Sustainability**

- 156.1 In carrying out the Works the *Contractor* shall:

156.1.1 have regard to the objectives and requirements of the Future Generations Act,

156.1.2 fully and effectively co-operate with the Employer and the Welsh Government to allow the Employer and the Welsh Government to comply with the Future Generations Act.

- 156.2 The Contractor shall appoint a Sustainable Development Manager to promote, manage and assure the Contractor's delivery of the programme of sustainable development, ethical procurement and innovation envisaged by this contract.

- 156.3 The Sustainable Development Manager shall be identified as a key person.

157. **Economic and Ethical Procurement**

- 157.1 In delivering the Works, the *Contractor* shall provide opportunities for:

157.1.1 Local Suppliers,

157.1.2 SMEs, and

157.1.3 TSEs

in Wales and in regions served by the InfraCo Services.

157.2 In providing the Works and where there are tender opportunities for subcontractors to the *Contractor*, the *Contractor* shall work collaboratively with Business Wales and other relevant Welsh Government agencies and / or departments to hold regular events and workshops (involving where appropriate its subcontractors) and advertise, where reasonably practicable, all new tender opportunities in respect of the provision of the Works through Sell2Wales to help ensure resulting business opportunities are maximised with Local Suppliers, SMEs and TSEs.

157.3 The Contractor shall at all times keep accurate and complete records of its use of and interaction with Local Suppliers, SMEs and TSEs in delivering the Works.

157.4 Annually or at project end, whichever is the earlier, the Contractor shall deliver to the Employer a breakdown of the number of Local Suppliers, SMEs and TSEs used by the Contractor in providing the Works during the calendar year (or part thereof) which ended on the immediately preceding 31 December or project end (as applicable).

158. **Use of Ethical Resources**

158.1 The Contractor shall use all reasonable endeavours to ensure that the materials used by it and its Subcontractors comply with the requirements of "BES 6001 Responsible Sourcing of Construction Products".

158.2 The Contractor shall use all reasonable endeavours to ensure that the following resources are not used in the delivery of the Works:

158.2.1 "dumped" steel which is steel provided at a cost that is subsidised by a foreign government,

158.2.2 timber without Forest Stewardship Council (FSC) certification, and

158.2.3 any other materials or resources the use of which would cause material damage to the reputation of the Employer and the Welsh Government through lack of ethical resourcing.

158.3 In delivering the Works, the *Contractor* shall fully and effectively co-operate with the *Employer* and the Welsh Government with regard to the commitment of the *Employer* and the Welsh Government to:

158.3.1 responsible and sustainable sourcing of raw materials part finished and finished products, and

158.3.2 Wales' status as a Fair-Trade Nation and commitment to International Labour Organisation standards.

159. Ethical Employment

159.1 The *Contractor* shall sign up to and comply with the Welsh Government's Code of Practice for Ethical Employment in Supply Chains.

159.2 The Contractor shall not (and shall procure its Subcontractors shall not) employ any employees on zero-hour contracts.

160. Social

SKILLS GAP ANALYSIS

160.1 In providing the Works, the Contractor shall fully and effectively co-operate with the Employer to assist the Employer to address the skills gap identified in the Welsh Government document entitled "Skills Gap Analysis", including through the Contractor's supply chain.

160.2 The Contractor shall provide to the Employer, at the Contract Date, an Initial Skills Plan setting out the:

160.2.1 skills required to deliver the Works,

160.2.2 skills available to the Contractor within its current workforce and its wider supply chain, and

160.2.3 any skills gap which is required to be covered by training or recruitment.

160.2.4 by no later than 1 January in each year up until Completion the Contractor shall deliver to the Employer a list of the number of training and apprenticeships offered by the Contractor and its supply chain in performing its obligations under the Contract during the calendar year (or part thereof).

SKILLS DEVELOPMENT

160.3 The *Contractor* shall fully and effectively co-operate with the *Employer* in order to establish (where not currently in existence) and support training facilities related to the skills required to deliver the Works as notified by the *Employer* to the *Contractor*. This may involve working with, amongst others, Qualifications Wales, Network Rail, local colleges and universities, private providers, trade bodies and the Construction Wales Innovation Centre.

TAKING WALES FORWARD AND PROSPERITY FOR ALL

160.4 The *Contractor* shall fully and effectively co-operate with the *Employer* and relevant third parties to support the *Employer's* objectives to implement the Welsh Government's "Taking Wales Forward" programme or any equivalent subsequent programme and the Welsh Government's national strategy "Prosperity for All" or any subsequent equivalent strategy.

LIVING WAGE

160.5 The Contractor shall pay, and shall procure that its Subcontractors shall pay (in respect of provision of the Works such requirement to be included in the subcontract) the Living Wage to their respective employees provided that this requirement does not apply to Apprentices.

160.6 The Contractor shall procure that its Subcontractors shall pay (in respect of provision of the Works, such requirement to be included in the subcontract) the Living Wage to their respective employees provided that this requirement does not apply to Apprentices.

VOLUNTEERING

160.7 In recognition of the value of volunteering to the community the Contractor shall support its staff in voluntary community work and relevant schemes that encourage, support and reward volunteering in the communities that are served by the Works.

CONTRACTOR STAFF SAFETY AND WELLBEING

160.8 The Contractor shall support and improve the health and well-being of Works Employees, including by:

160.8.1 monitoring, managing and improving occupational health risks, level of Works Employee engagement and morale and general wellbeing of the workforce, and

160.8.2 supporting the management of individual health risk.

160.9 The Contractor shall use all reasonable endeavours to safeguard the security of Works Employees and shall seek to reduce the incidence and fear of crime and anti-social behaviour against Works Employees, including by:

160.9.1 implementing systems, including staff training, to control and minimise crime and security incidents, and

160.9.2 assessing and reviewing regularly the security and crime risk to Works

Employees.

161. The Environment

161.1 In providing the Works, the Contractor shall work towards meeting ISO14001:2015 and ISO50001:2011 or equivalent standards and shall report on its progress towards this requirement within the quarterly report required at clause 124.4 above.

161.2 In delivering the Works the Contractor shall assist the Employer and the Welsh Government in meeting their obligations under the following:

161.2.1 the Environment (Wales) Act 2016,

161.2.2 the "Towards Zero Waste Strategy",

161.2.3 the Construction Demolition Sector Plan, and

161.2.4 the recommendations of the Green Growth Wales Paper.

162. Natural Environment and Biodiversity

162.1 In delivering the Works, the Contractor shall use all reasonable endeavours not to do anything that would have an adverse effect on the integrity of any Natura 2000 site as set out in the Works Information.

162.2 In delivering the Works, the Contractor shall have due regard to conserving and enhancing biodiversity and in particular, shall have due regard to:

162.2.1 the United Nations Environmental Programme Convention on Biological Diversity of 1992,

162.2.2 any list of living organisms and types of habitat published by the National Assembly for Wales under section 42 of the Natural Environment and Rural Communities Act 2006, and

162.2.3 and conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.

162.3 In delivering the Works, the Contractor shall take all reasonable precautions to reduce or prevent pollution of air, soils and water, and meet the costs of fully rectifying any pollution caused by the Works in accordance with the Polluter Pays Principle.

162.4 The Contractor shall implement an Environmental Management Plan that details the major environmental risks associated with the Works and the measures adopted to mitigate such risks. The Environmental Management Plan must include details of the

identities, roles, responsibilities and experience of those responsible for managing and monitoring the environmental performance of the Works.

163. Waste Management and Recycling

163.1 In delivering the Works, the *Contractor* shall, and shall use reasonable endeavours to procure that its Subcontractors shall, use all reasonable endeavours to minimise the impact of waste through implementing a plan that deals with waste in the following descending order of priority:

163.1.1 prevention of waste,

163.1.2 minimisation of waste,

163.1.3 re-use of waste,

163.1.4 recycling of waste, and

163.1.5 disposal of waste,

being the "**Waste Management Plan**".

163.2 The Contractor shall provide a copy of the Waste Management Plan to the Employer upon request.

163.3 In delivering the Works, the Contractor shall implement measures across the Works which seek to minimise water usage.

163.4 In delivering the Works, the Contractor shall use all reasonable endeavours to reuse materials or use recycled materials such as aggregates and recycled paint.

164. Carbon Reduction

164.1 The *Contractor* shall:

164.1.1 agree carbon reduction targets with the Employer which are appropriate to the Works,

164.1.2 implement a low carbon impact strategy in relation to traffic and traffic miles to help monitor and minimise the movements to and from sites for the transporting of the workforce and materials,

164.1.3 where reasonably practicable, deliver the Works, taking into account the Employer's objective of zero carbonisation, and

164.1.4 implement measures to minimise energy usage in relation to the Works and, wherever possible, utilise energy from renewable sources.

165. Sustainable Construction

165.1 Where appropriate, when the *Contractor* has design responsibility for the Works, the *Contractor* shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using BREEAM or CEEQUAL (or a rating equivalent to "excellent" in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the *Employer* (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the *Contractor* shall provide to the *Employer* such information in relation to any construction project as the *Employer* may reasonably request.

166. Reporting

166.1 The *Contractor* shall record the sustainability benefits it achieves in providing the Works and shall provide a report to the *Employer* on delivery of such benefits on a quarterly basis from the Start Date. Such report is to be provided in a format to be agreed with the *Employer* within three (3) months of the Start Date.

167. Culture and Language

167.1 The *Contractor* shall support the use of the Welsh language in provision of the Works and shall have regard to:

167.1.1 the official status which the Welsh language has in Wales,

167.1.2 the duties to use Welsh which are (or may be) imposed by law, and the rights which arise from the enforceability of those duties,

167.1.3 the principle that, in Wales, the Welsh language should be treated no less favourably than the English language, and

167.1.4 the principle that persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

167.2 In the event that the *Contractor* is required to provide communications to individual members of the public, such communications shall be provided in English and Welsh except where the individual has selected either Welsh or English as their preferred language of communication. Where such preference has been received and recorded by the *Contractor*, communications may be provided in the selected language of English or Welsh. Where a communication has been received in English or Welsh the

Contractor may reply in that language only, subject to the response including an invitation for individual members of the public to identify a language preference for future communications.

168. Parent Company Guarantee

168.1 The Contractor shall enter into a Parent Company Guarantee substantially in the form attached at Appendix 9 (any amendment to be reasonably agreed by the Employer) by no later than 29 January 2021.

169. ERDF REQUIREMENTS

169.1 The Contractor shall comply with the ERDF Requirements.

169.2 Notwithstanding anything to the contrary in this Contract, the Parties agree that:

169.2.1 For any Works that are potentially in receipt of EU Funding ("ERDF Funded Works"), the Contractor shall work with and provide assistance to the Employer to ensure compliance with the requirements set out in the approval contracts for the schemes and with the Structural Fund Regulations. These are currently set out in http://ec.europa.eu/regional_policy/en/information/legislation/regulations/

169.2.2 The Contractor shall provide to the Employer documents, information and reports from time to time in order to monitor the compliance of EU funded operations with the Conditions of EU funding for any Works. The Contractor shall retain the original documents or versions certified to be in conformity with the originals relating to any ERDF Funded Works until the Employer confirms in writing that the Contractor is able to destroy them.

169.2.3 The Employer may carry out verification checks to cover administrative, financial, technical and physical aspects of the ERDF Funded Works to verify that the expenditure declared is real, and in accordance with EU Funding rules. The verification will be carried out on a sample basis determined by the Employer.

169.2.4 The Contractor must without charge, permit any officer or officers of the Employer, the Welsh European Funding Office, Welsh Audit Office, European Commission, the European Court of Auditors or European Anti-Fraud Office (or successor organisations) at any reasonable time and on reasonable notice, to visit Contractor premises and / or to inspect any of Contractor activities that are in relation to ERDF Funded Works. This undertaking is without prejudice and subject to any other statutory rights and powers

exercisable by the Employer, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above.

169.3 Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006, the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. Such officials have the power to require relevant information and explanation that they may require and to require those persons to attend before them for such a purpose. The Auditor General and such staff may exercise this right at all reasonable times.

170. **Not Used**

Annexures to the Conditions of Contract

- 1 Annex 1: Contract Data Part One
- 2 Annex 2: Contract Data Part Two
- 3 Annex 3: Works Information
- 4 Annex 4: Commercial Information
- 5 Annex 5: CV's of Contractor's Key Persons
- 6 Annex 6: Site Information
- 7 Annex 7: Key Subcontractors

Annex 1

Contract Data

Part One - Data Provided by the Employer **STATEMENTS GIVEN IN ALL CONTRACTS**

1. General

- The *conditions of contract* are set out within Appendix 2
- The *Works* are the design and construction of the Taffs Well Depot, as further detailed in the Works Information.
- The *Employer* is

Name: Transport For Wales
- Address: 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH
- The *Project Manager* is

Name: Callum Hughes

Address: Transport For Wales Cvl Infrastructure Depot Ty Trafnidiaeth,
Treforest Industrial Estate, Gwent Road, Pontypridd, United
Kingdom, CF37 5UT
- The *Supervisor* is

Name: Dan Pugh

Address: Transport For Wales Cvl Infrastructure Depot Ty Trafnidiaeth,
Treforest Industrial Estate, Gwent Road, Pontypridd, United
Kingdom, CF37 5UT
- The Works Information is in Annex 3
- The Site Information is in Annex 6
- The Principal Designer is InfraCo.
- The boundaries *of the site* are as shown on diagram no. TRAN01-KAW-R0-TAF-DDR-A-LP-001001 Rev P01.2 included in Appendix 14 to the Works Information
- The *language* of this contract is English
- The *law of the contract* is the law of England and Wales
- The *period for reply* is two weeks

- The *Adjudicator* nominating body is TeCSA
- The *tribunal* is Litigation
- The *records retention* is 15 years following Completion
- The following matters will be included in the Risk Register:
Please refer to the Risk Register annexed to this contract at Annex 4 Part 2 which has been jointly developed during ECI phase

2. Time

- The *starting date* is: 16 July 2019
- The *access dates* are detailed in Appendix 14 of the Works Information and are summarised below. The dates are subject to the prior agreement with the *Project Manager*:

Area 1: CVLICC Service Corridor	24/01/2022
Area 2: Alun Griffiths CVLICC Compound	07/03/2022
Area 3: Alun Griffiths Car Parking	02/08/2021
Area 4: Alun Griffiths Access/ Haul Road	07/03/2022
Area 5: Alun Griffiths Ret. Wall Construction	07/03/2022
Area 6: Alun Griffiths Bridge Compound	22/09/2022
Area 7: Alun Griffiths Bridge Storage	31/05/2021
Area 8: Alun Griffiths Substation and Highway	01/05/2022
Area 9: Site wide remediation	19/10/2020
Area 10: Shared Northern Access Road	01/07/2022

- The *Contractor* submits revised programmes at intervals no longer than calendar monthly

4. Testing and Defects

- The *defects date* is fifty-two weeks after Completion of the whole of the Works
- The *defect correction period* is two weeks

5. **Payment**
- The *currency of this contract* is pound sterling (£)
 - The *assessment interval* is monthly.
 - The *interest rate* is two percent (2%) per annum above the base lending rate of the Royal Bank of Scotland plc (or such other bank as the Parties may agree).
 - The relevant weather station shall be that at Pontypridd.
8. **Risks and Insurance**
- The amounts of insurance and periods for which the *Contractor* maintains insurance are as noted in Clause 85 of the *conditions of contract*

Optional Statements

Completion Date The *Completion Date* for each section of the works is

<i>section</i>	<i>description</i>	<i>completion date</i>
1	Stadler Offices (temporary or permanent) to be completed. This is to include the offices and the ground floor to allow the train operator to install and commission their systems. The Contractor will still require access to the location of the permanent offices for the completion of other works until 28th October 2022 and this shall not be un-reasonably withheld.	28/10/2022
2	All external track completed. This is to include the signalling, external OLE and access to mainline.	16/11/2022

	<p>It should be noted that in terms of Signalling completion this will be installation and the ability to operate points manually, Also the required infrastructure to commission the fringe. For OLE this means the Contractor will be Ready For Energisation.</p> <p>This KPI date is not linked to works by 'others/3rd parties' and as such should the permanent way etc not be installed by Others from the mainline etc this will not impact this KPI achievement by ARL.</p>	
3	<p>Maintenance Shed Road 10 to be completed.</p> <p>This is to include the completion of the workshop and warehouse area inclusive of the overhead crane, permanent jacks and wheel lathe but excluding installation and commissioning of Stadler tooling (by Others), however it excludes 'temporary lifting jacks' which will be provided by Stadler albeit temporary</p>	16/11/2022

	power would be required for these	
4	'Entire' Maintenance Shed Commissioning to be completed. This is to exclude the high level access platforms.	19/12/2022

- The *Completion Date* for the whole of the Works is 30/01/2023.

Quality Plan

- The *Contractor* submits a quality plan within 4 weeks of the execution of the contract.

Open Document Format

- The Open Document Format is as set out in Table 5 below:

Table 5: Transfer software formats

Document Type	Application	Default File Extension
Drawings	Adobe Suite	.pdf, .dgn
Common Data Environment (CDE)	Bentley ProjectWise V8i	N/A
CAD data including models and drawings	Bentley Systems CAD Programs including but not limited to: Bentley MicroStation V8i (Select Series 4) Power Rail Track (Select Series 4)	.dgn, .dwg .nwd, .nwc, .ifc, COBie 2012
Reports and Correspondence	Adobe Suite Microsoft Word	.pdf .docx
Spreadsheets	Microsoft Excel	.xlsx
Databases	Microsoft Access	.mdb
Images	JPEG	.jpg
Videos	MP4	.mp4
Programme	Primavera P6	.xer

Forecasts of Defined Cost

- The *Contractor* prepares forecasts of the total Defined Cost of the work at intervals of no longer than calendar monthly.

Exchange Rates

- The *exchange rates* are those published in the Financial Times on the assessment date
-

Risk Reduction Meetings • *Risk reduction meetings* shall be held at intervals of not more than calendar monthly.

Aggregate Liability Cap The Aggregate Liability Cap is £35,000,000.

- Additional Employer's Risks**
- In respect of the period from 14 January 2022, a failure of the *Employer* to 'grant' working hours between 08:00 to 18:00 hours Mon to Sat inclusive – for whatever reason (instead of 08:00 to 18:00 hours Mon to Fri and 08:00 to 13:00 Sat, prior to the date of this Agreement.
 - In respect of the period from achievement of cladding to the Depot building, until actual Completion, a failure of the *Employer* to 'grant' additional working hours to facilitate the Contractor working inside the Depot building at any time including Bank Holidays, other than during the period between 18:00 hours on Saturday and 20:00 hours on Sunday.
 - the differential between:

any fee paid by the *Contractor* to the sub-contractor under any payment application made by the sub-contractor under the Alun Griffiths subcontract; and

the fee that would have been payable under the Alun Griffiths subcontract had the fee under such subcontract been 12.5% of the Price of the Works Done to Date under such subcontract.
 - The Price of the Works Done to Date in respect of the purchase and install of the walkway handrail lighting. If the £500,000 allowance within the Total of the Prices proves to be incorrect.
 - Items excluded from the Prices and agreed to be held as an *Employer's* risk during Stage 2 negotiations as shown in the below table;

Item	Description
Demolition of Substation	No allowance in the Prices, to be instructed and PM to assess physical condition
Additional MEP allowance for Enhanced finishes / FF & E schedule	Any enhanced finishes, required by Employer above the requirements of the Works Information
Any Enhanced Finishes	Any enhanced finishes, required by Employer above the requirements of the Works Information
Fixtures, Furniture and Equipment	No allowance for furniture within the Prices, this to be provided by the Employer
Stadler tools & equipment	Any additional tools and equipment required by Stadler that were not defined at the DoV Date
Signage (rail, safety, location, entrance, internal)	Signage risk to be held by ARI, Employer holds the risk on branding signage to the external face of the building as it is not currently defined
Soft landscaping allowance	Any additional soft landscaping required by was not defined at the DoV Date

Liability Limitation Period • The *end of liability date* is 15 years after the Completion of the whole of the Works

- No Warranty (Clause 27.29A)** • The warranted design information is:
- TRAN01-KAW-R0-TAF-VRR-Z-CS-000001 - REV 3.0 - Taff's Well Depot Site Condition Report as uploaded to the USB reference TWD29;

Annex 2

Contract Data

Part 2 - Data Provided by the Contractor

1. General

- the *Contractor* is

Name: Amey Rail Limited

Address: Chancery Exchange, 10 Furnival Street, London EC4A 1AB
 - The *fee percentage* is 14.41% unless otherwise adjusted in accordance with the terms of this contract.
 - The *working areas* are the site and any site offices/compounds established for the Works but do not include the *Contractor* head office. For the avoidance of doubt the People costs only as it is defined in the Schedule of Cost Components of persons working on the Works that are working remotely either in offices, at home or otherwise are recoverable as Defined Cost as if they were working within the Working Areas.
 - the *key persons* are:

Works Director

Name: Wayne Brigden

Job: Contract Director

Responsibilities, Qualifications, Experience: Refer to CV in Annex 5

Name: Clive Porter

Job: *Contractor's Representative*

Responsibilities, Qualifications, Experience: Refer to CV in Annex 5
 - The following matters will be included in the Risk Register

All risks recorded on the contract management software SYPRO.
2. Optional Statements • The Works Information for the Contractor's design is to be submitted to the *Project Manager* for acceptance in line with the design assurance process set out in the Works Information.

**Data for Schedule
of Cost
Components**

- The Initial total of the Prices is £97,423,833.76 (Ninety-seven million four hundred and twenty-three thousand six hundred and thirty-three pounds and seventy-six pence)

The following components of the cost of:

- people who are directly employed by the *Contractor* and whose normal place of working is within the Working Areas, and
- the cost of people who are directly employed by the Contractor and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas.

With the exception of those rates in respect of signalling and AOWR works which have been subject to review with the Employer prior to the date of this contract, Hourly People Rates as detailed in Annex 4 are subject to audit and are to be based on the Schedule of Cost Components for People. The proposed rates shall be used for interim purposes until the audited rates are agreed, at which point the Price for Work Done to Date shall be reassessed using the audited rates.

- The listed items of Equipment purchased for work on this contract, with an on cost charge are:

Equipment	Time-related charge	Per time period
N/A.....	per

- The rates for special Equipment are

Equipment	Size or Capacity	Rate
N/A.....

- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are:

Category of Employee	Hourly Rate
----------------------	-------------

N/A.....

- The percentage for manufacture and fabrication overheads is N/A
- The hourly rates for Defined Cost of design outside the Working Areas are

Category of Employee	Hourly Rate
----------------------	-------------

Please refer to the Hourly People Rates for Design as detailed in Annex 4.

Hourly People Rates as detailed in Annex 4 are subject to audit and are to be based on the Schedule of Cost Components for People. The proposed rates shall be used for interim purposes until the audited rates are agreed, at which point the Price for Work Done to Date shall be reassessed using the audited rates.

- The categories of design employees whose travelling expense to and from the Working Areas are included as a cost of design of the Works and Equipment done outside of the Working Areas are

Annex 2 to Part 2
Compensation Event Register

CEN No	Description	Prog Impact Incl In Deed of Variation	Price Incl within Deed of Variation
CE001	FM 002 PC Duties at Moy road	Yes	Yes
CE002	FM 002 Fit out of the offices at Moy Road	Yes	Yes
CE003	FM 002 Car park works Moy Road	Yes	Yes
CE004	OLE design using Non-continuous Rigid Catenary system	Yes	Yes
CE005	Access to Area 1: CVL ICC Service Corridor not provided by the Access Date	Yes	Yes
CE006	Removal of obstructions within the Works Area (advance works)	Yes	Yes
CE007	Delay to handover dates (RWall)	Yes	Yes
CE008	Boundaries of the Site - Access Dates Area 2	Yes	Yes
CE009	Boundaries of the Site - Access Dates Area 3	Yes	Yes
CE010	Boundaries of the Site - Access Dates Area 4	Yes	Yes
CE011	Boundaries of the Site - Access Dates Area 5	Yes	Yes
CE012	Boundaries of the Site - Access Dates Area 6	Yes	Yes
CE013	Boundaries of the Site - Access Dates Area 7	Yes	Yes
CE014	Boundaries of the Site - Access Dates Area 8	Yes	Yes
CE015	Boundaries of the Site - Access Dates Area 10	Yes	Yes
CE016	Value Engineering Schedule - Additional Client VE (10 items)	Yes	Yes
CE017	Value Engineering Schedule - Item 10	Yes	Yes
CE021	Increased Size of Obstruction 11	Yes	Yes
CE022	Increased Depth of Excavation & Potential Contamination	Yes	Yes
CE023	Additional Obstruction Removal Works to obstruction 11	Yes	Yes
CE024A	Additional GI at Taffs Well Depot (re testing only)	Yes	Yes
CE025	Temporary Access to Ffordd Beldryn Bridge Compound (reduced area)	Yes	Yes
CE026	Compensation Event - Removal of Obstructions (previously CE006)	Yes	Yes
CE027	ID 64509 Track bed design impacted by remediation works completed	Yes	Yes
CE028	Programme Delay - change to access dates (FM 007)	Yes	Yes
CE029	Additional Ground Investigation for 2 No Soakaway tests	Yes	Yes
CE030	Acceptance of Wheel Lathe Proposal	Yes	Yes
CE032	Carriage Wash size (s/s by CE68 sypro ID 86288)	Yes	Yes
CE034	FM 002 and FM 012 Car park works Moy Road	Yes	Yes
CE035	Japanese Knotweed treatment to Eastern Boundary, (s/s by CE75 sypro ID 87135)	Yes	Yes
CE036	CCTV Provision (alterations requirement)	Yes	Yes
CE037	MEP Stage C to VEVD Requirements	Yes	Yes
CE038	CE038 Value Engineering Schedule - Additional Client VE (10 items) prev CE16	Yes	Yes
CE039	CE039 Item 10 derogation on client AIP (prev CE017)	Yes	Yes
CE040	Reduction in levels to North end of site	Yes	Yes
CE041	Stage C to VEVD changes for: Ancillary Buildings & Slab Track	Yes	Yes
CE042	Stage C to VEVD changes for External Civils	Yes	Yes
CE043	Stage C to VEVD changes for: Rail Systems including points heating, signaling power, OLE & track	Yes	Yes
CE044	Stage C to VEVD for: Main Building and Sanding Shed	Yes	Yes
CE045	Stage C to VEVD for: Stabling Areas & Walkways	Yes	Yes
CE046	Stage C to VEVD for: CMS & Drainage	Yes	Yes
CE047	Weather Station Report October 2021 (exceeding 1 in 10 rainfall)	Yes	Yes
CE048	Office Shutter/ brickwork damage 27th November 2021	Yes	Yes
CE049	Programme Submission 20th October 2021	Yes	Yes
CE050A	Hazardous hotspot at TP421	Yes	Yes
CE051	Opening of Moys Road office during Christmas shutdown	Yes	Yes
CE052A	Emergency Lighting repairs/replacement at Moys Rd warehouse	Yes	Yes
CE053	Supply of Telehandler and operator for loading other parties materials	Yes	Yes
CE054A	Moys Road foul drainage emergency call out and future attendance	Yes	Yes
CE055	Battery store (Design and Construct)	Yes	Yes
CE056A	Repair works required to the warehouse Moys Road (internal fittings)	Yes	Yes
CE057	Balfour Beatty Container	Yes	Yes
CE058	Area 1 CVL ICC Service Corridor hand over date in delay (s/s by CE86 sypro ID 88429)	Yes	Yes
CE059	Excavate trench and place sand for diversion of 11kva cable by others	Yes	Yes
CE060	Hop up locations (taps to be provided)	Yes	No
CE061	Power for heating of Points 825 & 826	Yes	Yes
CE062	Gauging Assessment from CAD track layout dwgs (D gauge)	Yes	Yes
CE063	Roof repairs Moys Road	Yes	Yes
CE064	Shutter repair due to high winds 8th January 2022 (No3)	Yes	Yes
CE065	Excavation to formation level (non Arney PC area) in addition to CE040	Yes	Yes
CE066	Moys Road shutter repair No 2 (30th January 2022)	Yes	Yes
CE067	Weather Station Report February 2022 (exceeding 1 in 10 year rainfall)	Yes	Yes
CE068	Ph neutral cleaning fluids not allowed (carriage wash) Neutralization system	Yes	Yes
CE069	Access Dates as of 27th January 2022 (s/s by CE86 sypro ID 88249)	Yes	Yes
CE070	Shore Supply Interface specification	No	No
CE071	External cleaners store upgrade	No	No
CE072A	Replacement of two fan motors at Moys Road Depot	Yes	Yes
CE073	Provision of Klaxons to depot for internal use only	No	No
CE074	FM 002 and FM 012 Car park works Moy Road	Yes	Yes
CE075	Japanese Knotweed treatment to Eastern Boundary,	Yes	Yes
CE076	Moys Road shutter repair No 2 (30th January 2022)	Yes	Yes
CE077	Supply and attend to generator 6/4/22 to 5th October 2022	Yes	Yes
CE078	Repairs to offices LED lights, lock to gate, and shutter inspection	Yes	Yes
CE079A	Moy Road Roof inspections 1st Feb to 11th April 2022	Yes	Yes
CE080	Replace lights in mens toilets	Yes	Yes
CE081	WFD excavation works outside the site boundary	Yes	Yes
CE082	Southern Infiltration blanket obstructions	No	No
CE083	Remove roof tiles from warehouse 23rd and 24th April 2022	Yes	Yes
CE084	Driver/ Conductor movement model	Yes	No
CE085	Transfer of Ballast to Canton Depot	Yes	Yes
CE086	Existing 11kva De energisation Delay	No	No
CE087	Safety concern (existing cable in warehouse)	Yes	Yes
CE088	Area 8 Access date	No	No

*Moy Road
Maintenance* c) CE's relating to the cyclical maintenance and / or repairs at Moy Road offices and warehouse will be treated as zero value up to a cap of £36,533.85 – as included within the above pricing. Once this sum has been expended all such related costs – be they routine maintenance or one issues of any nature – the cost is to be borne by TFW via the agreement of CEs on an ongoing basis.

Annex 3

Works Information

Uploaded to the USB reference TWD29.

Annex 4

Commercial Information

Part 1

Schedule of Cost Components

In this schedule the *Contractor* means the *Contractor* and not its Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

1. PEOPLE

- 11 The following components of the cost of:
- people who are directly employed by the *Contractor* and whose normal place of working is within the Working Areas, and
 - the cost of people who are directly employed by the *Contractor* and whose normal place of working is not within the Working Areas but who are working in the Working Areas, proportionate to the time they spend working in the Working Areas.
- 12 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked on the contract or time that the Project Manager has approved for which they are specifically required to be available outside the Working Areas for work on the contract. Where such time is worked outside the Working Areas it shall not exceed the standard working hours per day for each person without prior authorisation by the Project Manager.
- 13 Payments to people for:
- (a) bonuses and incentives,
 - (b) overtime,
 - (c) working in special circumstances,
 - (d) special allowances,
 - (e) absence due to sickness and holidays,
 - (f) severance related to work on this contract.
- 14 Payments made in relation to people for:

- (a) travel,
- (b) subsistence and lodging,
- (c) relocation,
- (d) medical expenses,
- (e) passports and visas,
- (f) travel insurance,
- (g) items (a) to (f) for dependants,
- (h) protective clothing,
- (i) meeting the requirements of the law,
- (j) pensions and life assurance,
- (k) death benefit,
- (l) occupational accident benefits,
- (m) medical aid,
- (n) a vehicle,
- (o) safety training.

15 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by it according to the time worked while they are within the Working Areas.

- Amounts paid by the *Contractor*

2. EQUIPMENT

The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation),

21 Payments for the hire or rent of Equipment not owned by:

- the *Contractor*,
- its parent company, or

- by a company with the same parent company,
- at the hire or rental rate multiplied by the time for which the Equipment is required.

22 Payments for Equipment which is not listed in the Contract Data but is:

- owned by the *Contractor*,
- purchased by the *Contractor* under a hire purchase or lease agreement, or
- hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company,

at open market rates, multiplied by the time for which the Equipment is required.

23 Payments for Equipment purchased for work included in this contract listed with a time-related on cost charge, in the Contract Data, of:

- the change in value over the period for which the Equipment is required, and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

25 Payments for the purchase price of Equipment which is consumed.

26 Unless included in the hire or rental rates, payments for:

- transporting Equipment to and from the Working Areas other than for repair and maintenance,

- erecting and dismantling Equipment, and
 - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 27 Payments for purchase of materials used to construct or fabricate Equipment.
- 28 Unless included in the *hire rates*, the cost of operatives is included in the cost of people.

3. PLANT AND MATERIALS

The following components of the cost of Plant and Materials.

- 31 Payments for:
- purchasing Plant and Materials,
 - delivery to and removal from the Working Areas,
 - providing and removing packaging, and
 - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

4. CHARGES

The following components of the cost of charges paid by the *Contractor*.

- 41 Payments for provision and use in the Working Areas of:
- water,
 - gas, and
 - electricity.
- 42 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the Works.
- 43 Payments for:
- (a) cancellation charges arising from a compensation event,
 - (b) buying or leasing land,

- (c) compensation for loss of crops or buildings,
- (d) royalties,
- (e) inspection certificates,
- (f) charges for access to the Working Areas,
- (g) facilities for visits to the Working Areas by Others,
- (h) specialist services,
- (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices,
- (j) catering,
- (k) medical facilities and first aid,
- (l) recreation,
- (m) sanitation,
- (n) security,
- (o) copying,
- (p) telephone, telex, fax, radio and CCTV,
- (q) surveying and setting out,
- (r) computing,
- (s) hand tools not powered by compressed air.

5. MANUFACTURE AND FABRICATION

The following components of the cost of manufacture and fabrication of Plant and Materials which are:

- wholly or partly designed specifically for the Works, and
- manufactured or fabricated outside the Working Areas.

51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.

- 52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.

6. DESIGN

The following components of the cost of design of the Works and Equipment done outside the Working Areas.

- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.

7. INSURANCE

The following are deducted from cost:

- the cost of events for which this contract requires the *Contractor* to insure, and
- other costs paid to the *Contractor* by insurers.

Annex 4 Commercial Information

Part 2 Activity Schedule

Package No.	Proposed Packages	Elemental Packages grouped into proposed packages	
1B	Amey Direct Design	P Way	930,846.52
		Signalling & Telecoms	838,312.55
		Lighting/Signalling/Points & HV Power	138,846.25
		Base Price	
		OLE	6,155.72
		PM/EM, Civils, Environmental, TQ & Meetings + Misc	1,139,836.69
31	E&P		3,648,694.54
27	OLE and bonding		726,089.38
29	Signalling		4,835,174.43
28	P' Way		4,809,231.07
30	Telecoms	Telecoms	50,000.00
	Sub Contract Delivery		
1A	Arcadis Design	Architectural	1,370,182.33
		Civils and Structural	814,173.25
		External Civils	199,224.74
		Misc; PM, OLE	839,460.77
2A	Civils and Substructures Works	Excavation	23,092,117.10
2B		Foundations and holding down bolts etc	
3A	Steel Frame and Upper Floors	Bottom ballast, slab track infills	
3B	External Envelope	Hot and Cold rolled frame components	
5A	General building Package	Roof Cladding	
		Ancillary buildings - security /gatehouse	
5B	Metalwork	Gantries and walkways, railings and	
6	Building Fit out	Internal Wall, Floor and Ceiling structures and finishes.	3,026,415.45
	External Services		
	Ancillary Buildings not in Barn BoQ		
	Removal of obstructions	AG Estimate + Management Allowance	208,381.10
	Car Park Works Moy Road	Submitted	
	Steelwork VE	Submitted	
	ARL Additional Allowances		1,997,090.08
4	Mechanical and Electrical	MEP	10,759,299.53
	EWA		
	ARL Prelims		
	Staff		10,347,355.07
	Preliminaries	Attendance & Logistics	411,041.34

Key Equipment			
8	Appendix 10 Specialist Equipment subject to Clause 26.9 - 26.11.14 obligations	Carriage Wash Machine	548,835.00
9		Automated Test Facility for wheel set and associated equipment monitoring (AVIS)	538,396.68
10		Wheel Lathe	792,364.49
11		Depot Protection system	454,028.00
12		Lifting jacks	179,175.00
13		Overhead travelling crane	61,804.00
14		Retractable OHL	99,073.00
15		Mobile access platforms	20,000.00
16		Forklift	40,000.00
17		Painting facility	10,000.00
18		Shunter	140,078.00
19		Access control systems – biometric	
20		Sanding equipment (2No Bowser only)	125,364.44
21		Staged equipment, temporary jacks, shore supplies external to the building	175,000.00
22		Racking Small stores)	60,000.00
23		Racking (Heavy stores)	50,000.00
24		UFC wash	75,000.00
25		Key Equipment Deed of Variation	
26		Staging for front end maintenance	20,000.00
	Bam Specialist Equipment adjustment		
7	Specialist Fit Out	Office furniture and equipment	
4A		Passenger Lift	45,829.20
37A		Spare	8,203.54
	Employer PC Duties		
New	Office Refurb Moy Road	Agreed	99,332.81
New	PC Duties	Estimate only	3,370,824.61
Sub-total packages			77,101,236.68
Sweet PSC			- 75,000.00
Handrail lighting			- 1,382,177.73
Risk			4,237,035.00

Change Summary

CE048	Office Shutter/ brickwork damage 27th November 2021	6,896.26
CE050A	Hazardous hotspot at TP421	141,309.59
CE051	Opening of Moys Road office during Christmas shutdown	49,599.73
CE053	Supply of Telehandler and operator for loading other parties materials	346.47
CE054A	Moys Road foul drainage emergency call out and future attendance	21,234.76
CE059	Excavate trench and place sand for diversion of 11kva cable by others	29,936.28
CE063	Roof repairs Moys Road	2,219.26
CE064	Shutter repair due to high winds 8th January 2022 (No3)	678.48
CE065	Excavation to formation level (non Amey PC area) in addition to CE040	17,374.61
CE066	Moys Road shutter repair No 2 (30th January 2022)	210.00
CE068	Ph neutral cleaning fluids not allowed (carriage wash) Neutralization system	24,536.00
CE074	PMI 002 and PMI012 Car park works Moy Road	111,443.78
CE075	Japanese Knotweed treatment to Eastern Boundary.	53,649.68
CE076	Moys Road shutter repair No 2 (30th January 2022)	204.49
CE077	Supply and attend to generator 6/4/22 to 5th October 2022	2,154.86
CE079A	Moy Road Roof Inspections 1st Feb to 11th April 2022	8,325.93
CE081	WPD excavation works outside the site boundary	3,473.89
CE083	Remove roof tiles from warehouse 23rd and 24th April 2022	2,027.05
CE085	Transfer of Ballast to Canton Depot	4,500.00
Fee Target		80,361,215.07
Amey OWR total		3,053,997.73
Fee Target (excl AOWR costs)		77,307,217.34
Fee @ 14.41% applied to Fee Target excl the AOWR costs		£11,139,970.02
Early Works Agreement		5,922,648.67
Initial Total of the Prices		£97,423,833.76

Annex 4

Commercial Information

Part 3 Hourly People Rates

The Hourly People Rates for Construction are:

Construction	Cost Rate / Day (7.5hrs)
Account Director	815.63
Administrator	123.35
Analyst	256.92
Assistant Analyst	191.14
Commercial Assistant	197.02
Commercial Manager	378.64
Data clerk	123.35
Document Manager	150.91
E&P Asset Eng	265.90
E&P Inspection Engineer / E&P Field Engineer	202.54
E&P Professional Head	451.59
Environmental Asset Engineer	293.11
Environmental Inspection	245.30
Off track Asset Engineer	293.11
Off Track Inspection Engineer / Off Track Field Engineer	202.54
Off Track Professional Head	451.59
Principal Data Analyst	461.59
Protection Team	194.49
Senior Data Analyst	342.60
Signalling Asset Engineer	321.23
Signalling Inspection Engineer / Signalling Field Engineer	202.54
Signalling Professional Head	489.30
Structures Asset Engineer	293.11
Structures Inspection Engineer / Structures Field Engineer	230.36

Structures Professional Head	451.59
Task brief, SSOW and work package planner	158.32
Technical Director	608.38
Telecoms Asset Engineer	265.90
Telecoms Inspection Engineer / Telecoms Field Engineer	202.54
Telecoms Professional Head	451.59
Track Asset Engineer	321.23
Track Inspection Engineer / Track Field Engineer	202.54
Track Professional Head	451.59
Stations Asset Engineer	293.11

The Hourly People Rates for Design are:

Design SoR	Cost Rate / Day (7.5hrs)
Assistant Commercial Manager	313.42
Assistant Director	575.24
Assistant Engineer	265.18
Assistant Environmental Specialist	257.18
Assistant Project Manager	276.42
CAD Technician	244.51
Commercial Manager	473.45
CRE/CEM	602.01
Data Analyst	235.67
Design Co-ordinator	302.86
Engineer	331.47
Environmental Specialist	272.62
Graduate Engineer	260.89
Junior Professional / Junior Chartered Engineer	313.77
Junior Technical Engineer	261.51
Principal Commercial Manager	737.69
Principal Engineer CRE	583.17
Principal Environmental Specialist	351.30

Principal Project Manager	602.93
Project Manager	336.23
Resource Manager	242.10
Senior Architect	450.28
Senior CAD Technician	338.55
Senior Engineer	415.78
Senior Professional / Senior Chartered Engineer	401.30
Senior Project Manager	539.36
Senior Technical	334.71
Senior Commercial Manager	560.90
Senior Environmental Specialist	390.92
Technical Director	717.97

Signalling Rates

Year 2021	
Role	Rate / Hour
CRE Signalling	£ 49.01
PE Signalling	£ 79.07
Project Manager - Contractors Rep AW	£ 77.77
Senior Commercial Manager AP	£ 71.20
Construction Manager SA	£ 66.77
CRE Signalling KN	£ 71.20
Assistant Project Engineer JH	£ 66.77
Project Planner YD	£ 62.33
H&S Advisor AWn	£ 77.77
SSOW Planner SWP Planner Jarrad	£ 62.33
Supervisor - Site Manager PS	£ 62.33
Project Support Co-ordinator DW	£ 29.48
Assistant SSOW Planner	£ 48.78
Year 2022	
Role	Rate / Hour
CRE Signalling	£ 51.60
PE Signalling	£ 83.26
Project Manager - Contractors Rep AW	£ 81.88
Senior Commercial Manager AP	£ 74.97
Construction Manager SA	£ 70.31
CRE Signalling KN	£ 74.97
Assistant Project Engineer JH	£ 70.31
Project Planner YD	£ 65.63
H&S Advisor AWn	£ 81.88
SSOW Planner SWP Planner Jarrad	£ 65.63
Supervisor - Site Manager PS	£ 65.63
Project Support Co-ordinator DW	£ 31.04
Assistant SSOW Planner	£ 51.37
Year 2023	
Role	Rate / Hour
CRE Signalling	£ 54.27
PE Signalling	£ 87.56
Project Manager - Contractors Rep AW	£ 86.12
Senior Commercial Manager AP	£ 78.85
Construction Manager SA	£ 73.94
CRE Signalling KN	£ 78.85
Assistant Project Engineer JH	£ 73.94
Project Planner YD	£ 69.02
H&S Advisor AWn	£ 86.12
SSOW Planner SWP Planner Jarrad	£ 69.02
Supervisor - Site Manager PS	£ 69.02
Project Support Co-ordinator DW	£ 32.64
Assistant SSOW Planner	£ 54.02

Annex 5

CV's of Contractor's Key Persons



Wayne Brigden Operations Director

I have worked in the rail industry for 25 years during which time I have delivered many multi discipline and single discipline projects throughout the UK and I am currently leading two business units within Amey Rail

Home Location
Staffordshire

Education/Qualifications
PTS AC & DC
Behavioural Management
Trained
D32/33 City and Guilds
Vocational Assessment
IOSH Managing Safely
NEBOSH Accredited
Six Sigma – Green Belt
MAD Coach
Chairman for National
Safety Leadership Team

**Speak / Read /
Write English**
Yes

Current Employer
Amey Rail

Position at Amey Rail
Account Director

During my long career I have undertaken delivery of track renewals as part of the IMT in the London northwest territory up until 2007, when I then moved into multi discipline projects and have since successfully managed remodelling projects at; Milton Keynes (part of WCRM), Birmingham Moor Street, Bletchley and Clapham Junction (part of East London Line – Phase 2). I have also managed the delivery of track renewals on the North London Lines Railway Investment Project and Manchester Metro.

I then went on to lead the Carillion contracts on the Crossrail West programme for Network Rail. Where I was personally responsible and accountable for the delivery of Stockley Main Civils, West Inner Track Infrastructure, Old Oak Common to Paddington Approaches (OOCPA) and West Ealing Depot.

Following on from Crossrail I was appointed as the Operations Director for the Southern Rail Business for J. Murphy and Sons, which includes various contracts ranging from Civils Asset Management Frameworks to the newly awarded CP6 Anglia Multi-disciplinary framework worth an estimated £850 million over the next five years.

I am a good communicator with a calm and analytical approach to problem solving.

Apart from being conscientious and enthusiastic in my approach to work, I am an exceptional leader with good organisational skills and have an ability to build strong client relations.

Curriculum Vitae: Wayne Brigden

Employment History

HW Martin Group June 2019- June 2020	<p>Business Director- Rail and Highways I led the rail and highways businesses, setting new strategy for work winning Opportunities and safety culture improvements, we were awarded new Contracts within HE and HS2 and also achieved a much improved AFR and LTIFR</p>
J. Murphy and Sons April 2018- June 2019	<p>Operations Director – Infrastructure South I led the Southern Rail business delivering multi discipline projects throughout the Southern and Western Network Rail routes, I have also led to success the CP6 tender opportunity for the Southern multi discipline framework within the Anglia route.</p>
Carillion Rail May 2015 – March 2018	<p>Crossrail West Operations Director – Crossrail West Infrastructure I resumed complete control of the Carillion Crossrail West Infrastructure Contract, with an overall portfolio value of £470million. This was made up of WITI, OOCPA, West Ealing Sidings, Stockley Main Civils and future route enhancements.</p> <p>I have been the instrumental leader in driving the safe delivery of these works and meeting the Commercial targets whilst also delivering every key milestone for the Client.</p> <p>I have successfully delivered five Christmas Blockades since 2013 and I have also held full accountability for the Principal Contractor role for Crossrail West during this period.</p> <p>Other wider business successes have been my Chaired role of National Safety Leadership Team, implementation of strategy for blockade working within our business.</p> <p>In May 2016, I was requested the lead the Carillion National Grid Framework in which time, we successfully completed Transformer renewals in Substations, cabling contracts and the mobilisation of the project NEMO 400kV overhead line new build. Framework portfolio value £70million.</p>
Carillion Rail Oct 2013 – April 2015	<p>Project Director – West Inner Track Infrastructure (WITI), 'Crossrail West' I was overall accountable for the delivery of the WITI Contract on Crossrail West. This was made up of four key areas; Stockley, Airport Junction Remodelling - including the Stockley Flyover Main Civils Build, Acton Dive Under Remodelling, Southall and West Ealing remodelling.</p> <p>All the projects were multi-disciplined and included heavy Civil Engineering, Track and Overhead Line works including E&P and Signalling.</p>
Volker Rail April 2013 – Sept 2013	<p>Senior Project Manager – Head of Construction, Staffordshire Alliance I held overall responsibility for the construction activity on the £250m Staffordshire Alliance Project and was influential in setting the Possession strategy with the Network Rail Operations Director and TOC's</p>

and FOC's, whilst negotiating the £16m schedule for costs for the project. I also completed the haulage strategy for the project and undertook significant reviews of the work banks for 2014-2016.

Carillion Rail
July 2011- March 2013

Contracts Manager – Midlands/South & South East. Bletchley Remodeling, Thames Link KO2, MAFA East Coast South and Cross Rail Inner and Outer West – OOCPA Tender Team.
I was responsible for managing the above multi-discipline projects; the three key areas of my duties consisted of budgetary control, safe delivery to program and people management. Alongside the 'live' projects, I was also responsible for tendering the pipeline of future contracts on behalf of Carillion.

Carillion Rail
Oct 2011 – July 2011

Delivery Manager Bletchley Remodeling Project / ELL Clapham Junction and TLP Blackfriars Project
I was responsible for managing the construction of the above projects With a team of construction managers working under my control. I was responsible for maintaining the Program, the safe delivery and budgetary control for each project.

Carillion Rail
Jan 2010 – Oct 2010

Delivery Manager Birmingham Moor Street
Delivery Manager responsible for all disciplines completing work on the Birmingham Moor Street Project. This included track, S&T and civils. Project completed on time and to budget with an excellent safety record.

Carillion Rail
Jan 2009 – Dec 2009

Delivery Manager Work Winning
Delivery Manager supporting the Work Winning team during bidding and tendering process and attending client interviews.

Carillion Rail
Dec 2007 – Dec 2009

P-Way Construction Manager Milton Keynes (WCRM)
Managing all aspects of the project to ensure it ran on time, to budget. Also involved the planning and executing of track renewals. Main tasks included planning plant from suppliers; ensuring resource forecasts were accurate. Managing the logistics of labour and workforce, to ensure the project was sufficiently and safely staffed. Managing and monitoring all commercial and financial aspects. Enforcing, implementing and maintaining all aspects of safety. Ensuring frequent/thorough communication was maintained to eliminate risk. Management of all pre planned works. Undertaking QSRA reviews with Network Rail and Bectel. Undertaking White board meetings and managing principal contractor role for all planned activities.

Carillion Rail
March 2007 - Nov 2007

P-Way Construction Manager Manchester Metro
Managing all aspects of the project to ensure it ran on time and budget. Also involved in the planning and executing of track renewals. Main tasks included planning plant from suppliers; ensuring resource forecasts were accurate. Managing the logistics of labour /workforce, to ensure all areas

of the project were sufficiently and safely staffed. Managing and monitoring all commercial and financial aspects. Enforcing, implementing and maintaining all aspects of safety. Ensuring frequent / thorough communication was maintained to eliminate risk to the project. Management of all pre-planned works.

Carillion Rail
March 2006 - March 2007

Production Manager Carillion S&C Smethwick
Working for the S&C renewals. Main tasks included managing labour, both office and field based; production of rosters for gangs and supervisors/techs; planning and undertaking S&C renewals; planning and enforcing white board meetings; planning plant requirements; ensuring the depot was auditable compliant; ensure safety standards were maintained in depot and site areas; conducting safety briefs to staff and ensuring toolbox talks are completed.

Carillion Rail
Sept 2005 - March 2006

Safety Task Force
Seconded from "day job", to be part of the task force team. The objective was to enforce a 'best safety practice' through out the company. Role included inspecting and understanding all safety regimes on site. Involved extensive communication with all levels of personnel. Concluded by sharing knowledge and collated information, and recommending a way forward for Carillion. The findings and recommendations helped improved Carillion Rail's performance.

Carillion Rail
March 2004 - Sept 2005

Senior Supervisor
Working within the depot and assisting the production planner with the smooth running of the plain line renewals. This role involved resource planning, planning of plant, rostering supervisors, management of pre works and planning of renewals.

Amey Track Renewals
March 2002 - Feb 2004

Site Manager
Main objective was to maintain the site and assist with the planning of the jobs including assisting with resource levels and ordering of plant, ensuring we remained within hiring timescales; rostering the supervisors; assisted with the planning of works, both midweek and weekends and assisting with pre-planned works.

Carillion / Centrac
August 1996 - Feb 2002

PWay Apprentice up to Site Manager
Various roles within the Track Renewals organization working within both plain line and S&C.

References

References upon request.

Clive Porter

"...An enthusiastic and driven Senior Project Manager with a proven record of delivering complex multi-disciplinary projects in the rail sector..."

Personal Details

Position: Project Manager

Professional / Vocational Experience:

- Project Management
- Commercial awareness
- Construction Management
- CSM Knowledge
- Health, Safety and Environmental Awareness
- Liaising with various disciplines; Designers, engineers, contractors, etc.

Core Skills

- Excellent interpersonal and communication skills
- Good understanding of project/ contract management
- PTS AC/DC

Telephone

07854363923

Email

Clivedporter1980@hotmail.co.uk

References

Available on request

Personal Profile

I am a highly skilled rail programme manager who has delivered infrastructure projects on a regional and national level with values of up to £120 million. I have excellent experience of stakeholder engagement, contract and commercial management, having previously delivered a portfolio of projects in the rail and civils sector. I have managed large-scale, complex engineering works safely, to budget and on programme at a management, engineering and construction level. This experience and solid all round knowledge of the technical aspects of rail projects has enabled me to quickly adapt to new challenges and the pressure of high profile schemes. As an organised and driven individual with the proven ability to manage large multi-disciplinary teams I am keen to take on more challenging roles.

Relevant Experience

April 2015 – April 2020 - Network Rail/Mace – OLE Programme Manager – Great Western Electrification Project Value £110m

Overseeing the development, planning and delivery of the full scope of OLE and interfacing disciplines including the Testing and commissioning of Bristol Parkway to Newport. The construction has included 1200 Structures, route clearance and platform alteration for the new IEP rolling stock, fixings to 31 overbridges, viaducts and 6 tunnels. The sites extend for 70 miles including major Stations in Bristol and Wales, the Bath World Heritage site and areas of outstanding natural beauty. Key responsibilities;

- Management of 3 principle subcontractors to maintain programme, budget, quality and safety in line with Network Rail governance.

- Administering the Network Rail Target Cost contracts, forecasting and agreeing contractor applications for payment.
- Managing change control, creating employers instructions and agreeing project authority for works.
- Managing early works and design contracts pre-construction to enable site commencement on time and to the correct quality.
- Ensuring asset protection standards are upheld to maintain the safe working of the infrastructure whilst construction continues.
- Engagement with stakeholders, including English Heritage, National Resources Wales and public interest groups to present and agree design proposals.
- Regular visits to site to ensure work is carried out safely and to specification.

Jan 2013 – Apr 2015 - Volker Fitzpatrick – Rail Project Manager – Hitachi IEP Depots, Project Value £120m

Project Manager for Rail disciplines P-way, E&P, OLE and Signalling on the Swansea IEP Depot including CRE duties. Assisted with the development phase of North Pole and Stoke Gifford Depots including new signalling control system implementation for layouts totalling 53 point ends. Design Management for all disciplines including Civils, Structures, Building and M&E for Swansea Depot.

- Development of signalling system from tendering to commissioning for 3 IEP depots to meet client requirements and depot modelling specifications.
- Close liaison with Hitachi to ensure rolling stock interfaces and maintenance requirements with specialist systems were met for IEP stock.
- Development and delivery of specialist systems including staff depot protection, access, ventilation and HVAC equipment, shore supplies, train wash facilities, UFC facilities and the interlocking required between these to ensure safe operation during maintenance activities
- Integration of depot layout, signalling systems, specialist equipment including wheel lathes and automatic inspection equipment to ensure required throughput into and out of depot stabling areas was achieved.

- Hazid and Hazop facilitation and participation to ensure processes and systems provided functional requirements whilst maintaining safety.
- Project and construction management for rail systems installation.

Nov 2011 - Dec 2012 - Amey - Project Manager and Permanent Way CRE– Amey Colas Signalling Support, Project Value £3.5m pa, Tilbury Loop Platform Extensions, Project Value £8m, Tranche 9 Level Crossings Project Value £4m

Management of Signalling Support for S&C and Plain Line Renewals including works planning, testing and installation resourcing. P-way CRE responsible for works associated with platform extensions including S&C relaying, tamping and stressing, delivery of level crossing renewals including Exeter Red Cow crossing.

May 2011 – Nov 2011 – Amey - Assistant Project Manager – Cotswolds Redoubling, Project Value £15m Client Network Rail

I was Assistant Project Manager for the signalling, civils, structures and Principle Contractor elements of the Cotswolds Redoubling commissioning including construction of Honeybourne Station and footbridge, programme integration, coordination of subcontract, delivery partners and outside parties.

Dec 2009 – May 2011 – Carillion - Package Manager – North London Railway Infrastructure Project, Project Value £132m Client – Network Rail

Reporting directly to the Project Director with responsibility for the delivery of the Civils, Permanent Way, OHLE and E&P works in conjunction with Atkins Resignalling Works. Completion was achieved to entry into service including 3 major commissionings, the construction of Highbury Station Concourse, 6 new platforms and responsibility for delivering 9 S&C point ends renewals/new installations, a new freight loop, drainage works, OHLE piling and alteration work, civils works, cable management systems and interfacing with other disciplines.

The works were carried out in a variety of 24hr weekend possessions, a 9 day blockade over Christmas 2009 and a 14week blockade in a heavily congested site that required careful planning and coordination with other project works and outside parties including the Olympic Development Agency.

The role includes the control of budget, programme, safety and interface with other disciplines on a permanent way and civils scope.

May 2006 – Sep 2009 – Amey - Assistant Project Manager – Ebbw Valley Railway Project Value £32m, Client Capita Symonds/Welsh Assembly Government

Reporting to the Project Manager on the award winning reopening of the Ebbw Vale to Cardiff Railway link the scope included the delivery of 21 miles of track renewal, construction of 6 new stations, 36 miles of lineside works, 3 miles of drainage, civils works and structural repair works.

With responsibility for the detailed scope, design delivery, planning and delivery of the works through to completion on a contract with changing client requirements this project significantly developed my technical, contractual and change control ability.

Working with a client outside of Network Rail demanded an adaptable approach to meet the quality, safety and compliance standards expected including new procedural development and planning/costing methods.

Sep 2003- May 2006 – Amey - Technical Engineer - IMT Renewals

Working on the Western Region IMT Renewals contract including the planning of relay works, resourcing levels for plant/manpower, and materials in line with the works budget.

Responsible for production of track and platform alignment designs using Hallade spreadsheet methods and vertical designs with gauge clearance checking using ClearRoute.

Also responsible for surveying, production of site plans/paperwork, safety planning and mentoring of junior staff. Undertook supervision of technical work on site during relays or follow up works including Level 2 Speed Raising, regularly supervised laser dozing, tamping and stressing.

July 2002 – Sep 2003 – Amey - Graduate Management Trainee

Working within the technical team for Chilterns Renewals with duties including Permanent Way design, surveys, on-site supervision of plain line relays/tamping/stressing, managing the calibration records for site equipment, responsible for S&C measurement/ordering, RCF/Stressing databases, track quality monitoring, tamper planning, on site supervision of stressing/tamping and general permanent way work as required.

EDUCATION & TRAINING

Cardiff University

BEng Civil Engineering and Management

Professional

- IOSH – Managing Safely
- PTS
- Formerly held Network Rail competencies ES, COSS, Core Planning Skills 2
- NEBSM Introduction to Management
- OLEC Training

Annex 6

Site Information

As uploaded to the USB reference TWD29.

Appendix 3

Form of Novation Agreement

Appendix 4
The Contractor Warranty

Date: [•]

- (1) AMEY RAIL LIMITED ("Contractor")
- (2) [BENEFICIARY] ("Beneficiary")
- (3) TRANSPORT FOR WALES ("Employer")

Collateral Warranty: Contractor to the [Beneficiary]

relating to

Taffs Well Depot

THIS DEED IS MADE THE [•] DAY OF [•] 20[•]

BETWEEN

- (1) **Amey Rail Limited** incorporated and registered in England and Wales with company number 02995531 whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ ("**Contractor**"); and
- (2) [BENEFICIARY] ("**Beneficiary**"). [and]
- (3) Transport for Wales incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3 Llys Cadwyn, Pontypridd, Rhondda Cynon Taf, CF37 4TH ("**Employer**").

BACKGROUND

- (A) In accordance with a Contract dated [xxx] the Employer has engaged the Contractor to carry out the design and construction of the Taffs Well Depot as set out in the Contract ("the Works").
- (B) The Beneficiary, as [insert interest], has an interest in the Works.
- (C) The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Contractor has agreed to enter into this Deed with the Beneficiary, for the benefit of the Beneficiary.

CONSIDERATION

In consideration of the payment of the £1 by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges, the Contractor has agreed to enter into this deed with the Beneficiary.

AGREED TERMS

1 DEFINITIONS

- 1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them as in the Contract. The following terms have the following meanings:

Completion	occurs when the <i>Project Manager</i> certifies completion of the Works under the Contract.
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Contract

means the Conditions of Contract for Works between the Employer and the Contractor dated [•]

Deleterious Materials

any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

- (a) Section 2 of the British Council for Offices / British Property Federation report entitled "Good Practice in the Selection of Construction Materials" (current at the time of specification, authorisation or use);
- (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice;
- (c) any publications of the Building Research Establishment related to the specification of products or materials; or
- (d) the Standards (if the Standards are applicable to the Works), all applicable law, Statutory Requirements, the Sustainable Development Plan and the instructions of the *Employer*.

Funder

the person that has provided, or is to provide, finance in connection with: (a) the whole or any part of the Project or the completed Project; or (b) the whole or any part of the Site, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Intellectual Property

all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.

Works

the works provided by the Contractor in accordance with the Contract.

Material

all the designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them, prepared or to be prepared by or on behalf of the Contractor in connection with the Works.

Party

a party to this Deed

Permitted Uses

the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension [(but not to reproduce the designs contained in the Material in any such extension)] building information modelling and repair of the Works, the CVL Transformation and any Associated Projects

Project

Core Valley Lines Transformation

Required Standard	means the reasonable skill and care to be expected of a skilled, experienced and competent professional design and build contractor and rail infrastructure provider engaged in activities of a similar nature, scope, value and complexity to the Works and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all applicable laws and Statutory Requirements.
Site	[TBC]
Working Day	means a day other than a Saturday or Sunday, or a public holiday in Wales.

2 CONTRACTOR'S OBLIGATIONS

2.1 The Contractor warrants to the Beneficiary that:

- 2.1.1 it has complied, and shall continue to comply, with its obligations under the Contract;
- 2.1.2 it has executed, and shall continue to execute, the Works in a good and workmanlike manner;
- 2.1.3 it has exercised and shall continue to exercise the Required Standard when:
 - (a) carrying out design in respect of the Project; and
 - (b) selecting goods, materials, plant and equipment for incorporation in the Project; and
- 2.1.4 has not and will not specify or use Deleterious Materials in the Project.

2.2 The Contractor recognises that the Beneficiary has relied on or will rely upon the Contractor's skill and care and on the full and proper performance of the Contractor's obligations under the Contract.

2.3 In proceedings for breach of this clause 2, the Contractor may:

- 2.3.1 rely on any limit of liability or other term of the Contract; and
- 2.3.2 raise equivalent rights of defence and shall have no greater liability as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Contract (for this purpose not taking into account any set-off or counterclaim against the actual Employer under the contract).

2.4 The Contractor's duties or liabilities under this Deed shall not be negated or diminished by any:

2.4.1 approval or inspection of any designs or specifications for the Works; or

2.4.2 testing of any work, goods, materials, plant or equipment; or

2.4.3 omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Contractor.

2.6 The Contractor acknowledges that no amendment to or variation to the contract nor any waiver, release, settlement or estoppels in respect of any of the Contractor's obligations under the Contract shall in any way affect the Contractor's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.

3 ¹[STEP-IN RIGHTS: CONTRACTOR MAY NOT TERMINATE OR DISCONTINUE

3.1 The Contractor shall not exercise, or seek to exercise, any right to:

3.1.1 terminate its employment under the Contract or

3.1.2 discontinue performance of the Works

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least twenty (20) Working Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination or discontinuance.

3.2 The Contractor's right to terminate its employment under the Contract, or to discontinue performance of the Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Contractor, copied to the Employer:

3.2.1 requiring the Contractor not to terminate its employment or not to discontinue performance of the Works under the Contract;

3.2.2 acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the contract; and

¹ In the case of the Welsh Ministers and/or any party in which the Welsh Ministers has a controlling interest such as Transport for Wales and/or the operator of last resort.

- 3.2.3 undertaking that the Beneficiary or its nominee will pay to the Contractor:
- (a) any sums due and payable to the Contractor under the Contract in future; and
 - (b) any sums then due and payable to the Contractor under the Contract that are unpaid.
- 3.3 If the Beneficiary (or its nominee) serves notice on the Contractor under clause 3.3, then, from the date of service of the notice, the Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 3.4 In complying with this clause 3, the Contractor:
- 3.4.1 does not waive any breach of the Contract or default under by the Employer; and
 - 3.4.2 may exercise its right to terminate its employment under the contract, or discontinue performance of the Works, after the expiry of the notice period referred to in clause 3.1, unless the Contractor's right to terminate or discontinue has ceased under clause 3.3.]
- 4 [STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN]**
- 4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:
- 4.1.1 confirms that the Beneficiary wishes to step-in to the Contract; and
 - 4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,
- then, from the date of service of the notice,
- 4.1.3 the contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (or its nominee), to the exclusion of the Employer;
 - 4.1.4 The parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated contract as a stand-alone document.
- 4.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Contractor does not waive any breach of the Contract or default under the Contract.]

5 [STEP-IN RIGHTS: CONTRACTOR'S POSITION AND EMPLOYER'S CONSENT

5.1 The Contractor shall not incur any liability to the Employer by acting in accordance with clause 3 or clause 4.

5.2 The Employer has entered into this Deed to confirm its consent to the agreement.]

6 [STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.]

7 NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY

[Unless the Beneficiary has stepped-in under clause 3 or clause 4 ,] the Beneficiary may not give instructions to the Contractor under this Deed.

8 NOT USED

9 INTELLECTUAL PROPERTY

9.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material and any Intellectual Property contained in the Material prepared by, or on behalf of, the Contractor for any purpose relating to the Project, including any of the Permitted Uses.

9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.

9.3 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and / or provided.

9.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

9.5 In respect of any Material prepared by, or on behalf of, the Contractor (and which is being used for the purposes for which it was provided) the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses

which may be brought or made against the Beneficiary or to which the Beneficiary may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

10 [PROFESSIONAL INDEMNITY INSURANCE]

10.1 The Contractor shall maintain professional indemnity insurance at the Contractor's cost for an amount of at least £[INSERT SUM]m for any one occurrence or series of occurrences arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after Completion, provided that such insurance is available at commercially reasonable rates. The Contractor shall maintain that professional indemnity insurance:

10.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

10.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

10.1.3 on terms that:

(a) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and

(b) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

10.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

10.3 The Contractor shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers.

10.4 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Project and the Property, without that insurance.

10.5 The Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:

10.5.1 completing any proposals for insurance and associated documents; or

10.5.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Contractor for the net cost of that insurance above commercially reasonable rates.

10.6 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:

10.6.1 the Contractor's then current professional indemnity insurance; and

10.6.2 that the premiums for that insurance have been paid in full at the date of that letter.]

11 LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Contractor under this Deed after 12 years from the date of Completion.

12 ASSIGNMENT

12.1 The Contractor may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.

12.2 The Beneficiary may assign the benefit of this Deed:

12.2.1 on two occasions to any person; and

12.2.2 without counting as an assignment under clause 12.2.1;

(a) by way of security to a Funder (including any reassignment on redemption of security); or

(b) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

13 NOTICES

13.1 Each notice or other communication ("Notice") to be given under this Deed shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt Notice shall not be validly served by e-mail.

13.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on five (5) Working Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other Party at the address set out below:

13.2.1 Beneficiary:

[ADDRESS]

Attention: [CONTACT]

13.2.2 Contractor:

[ADDRESS]

Attention: [CONTACT]

13.2.3 [Employer:

[ADDRESS]

Attention: [CONTACT]]

13.3 Any Notice given by any Party shall be deemed to have been received:

13.3.1 if given by hand, at the time of day of actual delivery;

13.3.2 if posted, by 10am on the second Working Day following the Working Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

13.3.3 if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

14 THIRD PARTY RIGHTS

A person who is not a Party to this Deed shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

15 GOVERNING LAW AND JURISDICTION

15.1 This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.

15.2 The Parties irrevocably agree that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Employer directs that the High Court in London (or elsewhere) should have jurisdiction) to settle any disputes which may arise out of or in connection with this Deed and / or its subject matter or formation (including non-contractual disputes or claims).

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

Signed as a Deed by **Amey Rail Limited** acting by a director and its secretary or by two directors:

}

Signed as a Deed by **[Beneficiary]** acting by a director and its secretary or by two directors::

}

Signed as a Deed by **Transport for Wales** acting by a director in the presence of a witness:

SIGNATURE OF WITNESS

Name of Witness IN BLOCK CAPITALS

Address of Witness

Occupation of Witness

Appendix 5
Key Subcontractor Warranties

Date: [•]

- (4) [SUBCONTRACTOR] ("Subcontractor")
- (5) AMEY RAIL LIMITED ("Contractor")
- (6) TRANSPORT FOR WALES ("Employer")
- (7) [BENEFICIARY] ("Beneficiary")

Collateral Warranty: Key Subcontractor to [Employer / Welsh Government]

relating to

Taffs Well Depot

[DN: this draft warranty can also apply to a sub-consultant to the Contractor with amendment]

THIS DEED IS MADE THE [•] DAY OF [•] 20[•]

BETWEEN

- (1) [SUBCONTRACTOR] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Subcontractor"); and
- (2) **Amey Rail Limited** incorporated and registered in England and Wales with company number 02995531 whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ ("**Contractor**"). and
- (3) **Transport For Wales** (company number 09476013) whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Employer**")
- (4) [[BENEFICIARY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Beneficiary**")]

BACKGROUND

- (E) The Contractor has engaged the Subcontractor to carry out the [describe the nature of the services / works] in relation to the Project.
- (F) [The Beneficiary, as [insert interest], has an interest in the Works.]
- (G) The Contractor requires the Subcontractor to enter into a collateral warranty in favour of the [Employer / Beneficiary].
- (H) The Subcontractor has agreed to enter into this Deed with the [Beneficiary and / or Employer] for the benefit of the [Employer / Beneficiary].

CONSIDERATION

In consideration of the payment of £1 by the Beneficiary to the Subcontractor receipt of which the Subcontractor acknowledges, the Subcontractor has agreed to enter into this deed with the Beneficiary

AGREED TERMS

1 DEFINITIONS

1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them as in the Contract. The following terms have the following meanings:

Completion	occurs when the <i>Project Manager</i> certifies completion of the Works under the Contract.
Contract	the Conditions of Contract for Works dated [•] between the Employer and the Contractor in respect of the Project.
Deleterious Materials	<p>any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:</p> <ul style="list-style-type: none">(a) Section 2 of the British Council for Offices / British Property Federation report entitled "Good Practice in the Selection of Construction Materials" (current at the time of specification, authorisation or use);(b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice;(c) any publications of the Building Research Establishment related to the specification of products or materials; or(d) the Standards (if the Standards are applicable to the Works), all applicable law, Statutory Requirements, the Sustainable Development Plan and the instructions of the Employer.
Funder	the person that has provided, or is to provide, finance in connection with: (a) the whole or any part of the Project or the completed Project; or (b) the whole or any part of

the Site, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Intellectual Property

all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.

Materials

all the designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them, prepared or to be prepared by or on behalf of the Consultant in connection with the Works.

Party

a party to this Deed

Permitted Uses

the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension [(but not to reproduce the designs contained in the Material in any such extension)] building information modelling and repair of the Works, the CVL Transformation and any Associated Projects

Project

[TBC]

Required Standard

[In respect of the Subcontractor Works the degree of skill, care, diligence, experience, prudence and foresight to be expected of a skilled, professionally qualified, experienced and competent professional consultant (whether architect, structural engineer, project manager or otherwise), engaged in activities of a similar nature, scope, value and complexity to the Subcontractor Works and under the same or similar circumstances, where such consultant is seeking to comply with its contractual obligations and all applicable laws and Statutory Requirements.

OR

In respect of the Subcontractor Works, the degree of skill, care, diligence, experience, prudence and foresight to be expected of a skilled, professionally qualified, experienced and competent professional contractor engaged in activities of a similar nature, scope, value and complexity to the Subcontractor Works and under the same or similar circumstances, where such contractor is seeking to comply with its contractual obligations and all applicable laws and Statutory Requirements.]

Site

[TBC]

Sub-Contract

the agreement in writing between the Contractor and Subcontractor dated [•] under which the Subcontractor is to carry out and complete the Subcontractor Works

Subcontractor Works

the works relating to the Works which the Subcontractor is to perform under the Sub Contract.

Working Day

a day other than a Saturday or Sunday, or a public holiday in Wales.

Works

the works provided by the Contractor in accordance with the Contract.

2 SUBCONTRACTOR'S OBLIGATIONS

2.1 The Subcontractor warrants to the [Employer / Beneficiary] that:

- 2.1.1 it has complied, and shall continue to comply, with its obligations under the Sub-Contract;
- 2.1.2 it has executed, and shall continue to execute, the Subcontractor Works in a good and workmanlike manner;
- 2.1.3 it has exercised and shall continue to exercise the Required Standard when:
 - (a) carrying out design in respect of the Project; and
 - (b) selecting goods, materials, plant and equipment for incorporation in the Project; and
- 2.1.4 has not and will not specify or use Deleterious Materials in the Project.
- 2.2 The Subcontractor recognises that the [Employer / Beneficiary] has relied on or will rely upon the Subcontractor's skill and care and on the full and proper performance of the Subcontractor's obligations under the Sub-Contract
- 2.3 In proceedings for breach of this clause 2, the Subcontractor may:
 - 2.3.1 rely on any limit of liability or other term of the Sub-Contract; and
 - 2.3.2 raise equivalent rights of defence and shall have no greater liability as it would have had if the [Employer / Beneficiary] had been named as a joint employer, with the Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the Contractor under the contract).
- 2.4 The Subcontractor's duties or liabilities under this Deed shall not be negated or diminished by any:
 - 2.4.1 approval or inspection of any designs or specifications for the Subcontractor Works; or
 - 2.4.2 testing of any work, goods, materials, plant or equipment; or
 - 2.4.3 omission to approve, inspect or test,by or on behalf of the [Employer / Beneficiary] or the Contractor.
- 2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the [Employer / Beneficiary] by the Subcontractor.
- 2.6 The Subcontractor acknowledges that no amendment to or variation to the Sub-Contract nor any waiver, release, settlement or estoppels in respect of any of the Subcontractor's

obligations under the Sub-Contract shall in any way affect the Subcontractor's obligations to the [Employer / Beneficiary] pursuant to this Deed except in circumstances where the [Employer / Beneficiary] has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.

3 STEP-IN RIGHTS: SUBCONTRACTOR MAY NOT TERMINATE OR DISCONTINUE

3.1 The Subcontractor shall not exercise, or seek to exercise, any right to:

3.1.1 terminate its employment under the Sub-Contract or

3.1.2 discontinue performance of the Subcontractor Works

for any reason (including any breach on the part of the Contractor) without giving the [Employer / Beneficiary] at least twenty (20) Working Days' written notice of its intention to do so. Any notice from the Subcontractor shall specify the grounds for the Subcontractor's proposed termination or discontinuance.

3.2 If the Sub-Contract allows the Subcontractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 3.1.

3.3 The Subcontractor's right to terminate its employment under the Sub-Contract, or to discontinue performance of the Subcontractor Works shall cease if, within the period referred to in clause 3.1, the [Employer / Beneficiary] gives notice to the Subcontractor, copied to the Contractor;

3.3.1 requiring the Subcontractor not to terminate its employment or not to discontinue performance of the Subcontractor Works under the Sub-contract;

3.3.2 acknowledging that the [Employer / Beneficiary] (or its nominee) will assume all the Contractor's obligations under the Sub -contract; and

3.3.3 undertaking that the [Employer / Beneficiary] or its nominee will pay to the Subcontractor:

(a) any sums due and payable to the Subcontractor under the Sub-contract in future; and

(b) any sums then due and payable to the Subcontractor under the Sub-contract that are unpaid.

3.4 If the [Employer / Beneficiary] (or its nominee) serves notice on the Subcontractor under clause 3.3, then, from the date of service of the notice, the Sub-contract shall continue

in full force and effect, as if it had been entered into between the Subcontractor and the [Employer / Beneficiary] (to the exclusion of the Contractor).

3.5 In complying with this clause 3, the Subcontractor:

3.5.1 does not waive any breach of the Sub-Contract or default under by the Contractor; and

3.5.2 may exercise its right to terminate its employment under the Sub-Contract, or discontinue performance of the Subcontractor Works, after the expiry of the notice period referred to in clause 3.1, unless the Subcontractor's right to terminate or discontinue has ceased under clause 3.3.

4 STEP-IN RIGHTS: [EMPLOYER / BENEFICIARY] MAY STEP-IN

4.1 Without affecting clause 3.1, if the [Employer / Beneficiary] serves a notice on the Subcontractor, copied to the Contractor, that:

4.1.1 confirms that the [Employer / Beneficiary] wishes to step-in to the Sub-Contract; and

4.1.2 complies with the requirements for an [Employer's / Beneficiary's] notice under clause 3.3,

then, from the date of service of the notice,

4.1.3 the Sub-contract shall continue in full force and effect, as if it had been entered into between the Subcontractor and the [Employer / Beneficiary] (or its nominee), to the exclusion of the Contractor;

4.1.4 The parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated Sub-contract as a stand-alone document.

4.2 The Subcontractor shall assume that, between the Contractor and the [Employer / Beneficiary], the [Employer / Beneficiary] may give a notice under clause 4.1. The Subcontractor shall not enquire whether the [Employer / Beneficiary] may give that notice.

4.3 In complying with this clause 4 the Subcontractor does not waive any breach of the Sub-contract or default under the contract

5 STEP-IN RIGHTS: SUBCONTRACTOR POSITION AND CONTRACTOR'S CONSENT

5.1 The Subcontractor shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.

5.2 The Contractor has entered into this Deed to confirm its consent to the agreement.

6 STEP-IN RIGHTS: [EMPLOYER'S / BENEFICIARY'S] GUARANTEE

If an [Employer's / Beneficiary's] notice under clause 3 or clause 4 refers to the [Employer's / Beneficiary's] nominee, the [Employer / Beneficiary] shall be liable to the Subcontractor, as guarantor, for the payment of any sums due and payable from time to time to the Subcontractor from the [Employer's / Beneficiary's] nominee.

7 NO INSTRUCTIONS TO SUBCONTRACTOR BY [EMPLOYER / BENEFICIARY]

Unless the [Employer / Beneficiary] has stepped-in under clause 3 or clause 4, the [Employer / Beneficiary] may not give instructions to the Subcontractor under this Deed.

8 [PRIORITY OF STEP-IN]⁴

Where the Contractor has given rights in relation to the contract similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under clause 3 or clause 4, the notice served by the Beneficiary shall prevail.]

9 INTELLECTUAL PROPERTY

9.1 The Subcontractor grants to the [Employer / Beneficiary], with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material and any Intellectual Property contained in the Material prepared by, or on behalf of, the Subcontractor for any purpose relating to the Project, including any of the Permitted Uses.

9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Subcontractor.

9.3 The Subcontractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and / or provided.

9.4 The [Employer / Beneficiary] may request a copy (or copies) of some or all of the Material from the Subcontractor. On the [Employer's / Beneficiary's] payment of the

⁴ [DN: Priority to be considered if more than one Beneficiary]

Subcontractor's reasonable charges for providing the copy (or copies), the Subcontractor shall provide the copy (or copies) to the [Employer / Beneficiary].

- 9.5 In respect of any Material prepared by, or on behalf of, the Subcontractor (and which is being used for the purposes for which it was provided) the Subcontractor shall indemnify the [Employer / Beneficiary] from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the [Employer / Beneficiary] or to which the [Employer / Beneficiary] may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

10 PROFESSIONAL INDEMNITY INSURANCE

- 10.1 The Subcontractor shall maintain professional indemnity insurance at the Subcontractor's cost for an amount of at least £[INSERT SUM]m for any one occurrence or series of occurrences arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after Completion, provided that such insurance is available at commercially reasonable rates. The Subcontractor shall maintain that professional indemnity insurance:

10.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

10.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

10.1.3 on terms that:

- (a) do not require the Subcontractor to discharge any liability before being entitled to recover from the insurers; and
- (b) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

- 10.2 Any increased or additional premium required by insurers because of the Subcontractor's claims record or other acts, omissions, matters or things particular to the Subcontractor shall be deemed to be within commercially reasonable rates.

- 10.3 The Subcontractor shall not, without the [Employer's / Beneficiary's] written consent, by any act or omission lose or affect the Subcontractor's right to make, or proceed with, that claim against the insurers.

- 10.4 The Subcontractor shall immediately inform the [Employer / Beneficiary] if the Subcontractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Subcontractor and the [Employer / Beneficiary] can discuss how best to protect the respective positions of the [Employer / Beneficiary] and the Subcontractor regarding the Project and / or the Site without that insurance.
- 10.5 The Subcontractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:
- 10.5.1 completing any proposals for insurance and associated documents; or
- 10.5.2 maintaining insurance at rates above commercially reasonable rates, if the [Employer / Beneficiary] reimburses the Subcontractor for the net cost of that insurance above commercially reasonable rates.
- 10.6 Whenever the [Employer / Beneficiary] reasonably requests, the Subcontractor shall send the [Employer / Beneficiary] evidence that the Subcontractor's professional indemnity insurance is in force, including, if required by the [Employer / Beneficiary], an original letter from the Subcontractor's insurers or brokers confirming:
- 10.6.1 the Subcontractor's then current professional indemnity insurance; and
- 10.6.2 that the premiums for that insurance have been paid in full at the date of that letter.
- 11 LIABILITY PERIOD**
- The [Employer / Beneficiary] may not commence any legal action against the Subcontractor under this Deed after 12 years from the date of Completion.
- 12 ASSIGNMENT**
- 12.1 The Subcontractor may not assign or transfer any rights under this Deed without the prior written consent of the [Employer / Beneficiary].
- 12.2 The [Employer / Beneficiary] may assign the benefit of this Deed:
- 12.2.1 on two occasions to any person; and
- 12.2.2 without counting as an assignment under clause 12.2.1;
- (a) by way of security to a Funder (including any reassignment on redemption of security); or

- (b) to and from a subsidiary or other associated companies within the same group of companies as the [Employer / Beneficiary] so long as that assignee company remains within the same group of companies as the [Employer / Beneficiary].

13 NOTICES

13.1 Each notice or other communication ("Notice") to be given under this Deed shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt Notice shall not be validly served by e-mail.

13.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on five (5) Working Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other Party at the address set out below:

13.2.1 [Employer / Beneficiary]:

[ADDRESS]

Attention: [CONTACT]

13.2.2 Subcontractor:

[ADDRESS]

Attention: [CONTACT]

13.2.3 Contractor:

[ADDRESS]

Attention: [CONTACT]

13.3 Any Notice given by any Party shall be deemed to have been received:

13.3.1 if given by hand, at the time of day of actual delivery;

13.3.2 if posted, by 10am on the second Working Day following the Working Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

13.3.3 if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

14 THIRD PARTY RIGHTS

A person who is not a Party to this Deed shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

15 GOVERNING LAW AND JURISDICTION

15.1 This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.

15.2 The Parties irrevocably agree that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Employer directs that the High Court in London (or elsewhere) should have jurisdiction) to settle any disputes which may arise out of or in connection with this Deed and / or its subject matter or formation (including non-contractual disputes or claims).

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

Signed as a Deed by TRANSPORT FOR WALES acting by two directors or a director in the presence of a witness:

Signed as a Deed by Amey Rail Limited acting by a director and its secretary or by two directors:

Signed as a Deed by acting by two directors or a director in the presence of a witness:

Appendix 6
Dispute Resolution Procedure

Any dispute or difference between the Parties in connection with the Works (a "**Dispute**") shall be resolved pursuant to the dispute resolution procedure set out in this Appendix 6 (Dispute Resolution)

1 MANAGERIAL DISCUSSIONS

- 1.1 Without prejudice to the Parties' rights at any time to refer Disputes to adjudication in accordance with this **Appendix 14**, the Parties shall each use their reasonable endeavours to resolve any Dispute which may arise by means of prompt, bona fide discussion by Senior Representatives at a managerial level appropriate to the Dispute in question by a written notice identifying the Party's Senior Representative, giving brief written particulars of the Dispute, including the provisions of the contract that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- 1.2 Within fourteen (14) days of receipt of the notice of referral to Senior Representatives, the responding party shall provide the referring party with a brief written response and identify the responding party's Senior Representative.
- 1.3 Within a further fourteen (14) days the Senior Representatives shall meet and try to reach agreement to resolve the Dispute. Each Party shall bear its own costs and *expenses* in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

2 ADJUDICATION PROCEDURE

- 2.1 A Party may refer a Dispute to the *Adjudicator* at any time by way of a Notice of Adjudication.
- 2.2 The Parties shall appoint the *Adjudicator* (failing which TeCSA appointment)
- 2.3 The *Adjudicator* shall act impartially and decide the Dispute as an independent adjudicator and not as an arbitrator.
- 2.4 The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Nominating Authority to choose an adjudicator. Such joint appointment or referral to the Nominating Authority shall take place immediately upon

the serving of a Notice of Adjudication, or immediately following the position of *Adjudicator* falling vacant.

- 2.5 The Nominating Authority shall choose an adjudicator within four (4) days of the request. The chosen adjudicator shall become the *Adjudicator*.
- 2.6 A replacement adjudicator shall have the power to decide a Dispute referred to its predecessor but not decided at the time when its predecessor resigned or became unable to act. A replacement adjudicator shall deal with an undecided Dispute as if it had been referred to it on the date it was appointed.
- 2.7 The *Adjudicator*, its employees and agents will not be liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 2.8 Before a Party refers a Dispute to the *Adjudicator*, it shall issue a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that it wishes the *Adjudicator* to make. Following the appointment of the *Adjudicator*, the Party shall immediately send a copy of the Notice of Adjudication to the *Adjudicator*. Within three (3) days of the receipt of the Notice of Adjudication, the *Adjudicator* will notify the Parties
 - 2.8.1 that it is able to decide the Dispute in accordance with this contract or
 - 2.8.2 that it is unable to decide the Dispute and has resigned.
- 2.9 If the *Adjudicator* does not so notify within three (3) days of the issue of the Notice of Adjudication, either Party may act as if it has resigned.
- 2.10 Within seven (7) days of a Party giving a Notice of Adjudication it shall
 - 2.10.1 refer the Dispute to the *Adjudicator*,
 - 2.10.2 provide the *Adjudicator* with the information on which it relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
 - 2.10.3 provide a copy of the information and supporting documents it has provided to the *Adjudicator* to the other Party.
- 2.11 Upon receipt of the Referral Notice, the *Adjudicator* must inform every Party to the Dispute of the date that it was received. Within fourteen (14) days from the referral, any Party, who is not the Party giving a Notice of Adjudication, shall provide the *Adjudicator*

with the information on which it will rely, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

- 2.12 These periods may be extended if the Adjudicator and Parties agree.
- 2.13 If a matter disputed by the *Contractor* under or in connection with a subcontract and / or a consultancy agreement and / or a sub - consultancy agreement is also a matter disputed under or in connection with this contract the *Contractor* may, with the consent of the Subcontractor, the consultant, the sub-consultant (as appropriate) and the *Employer*, refer the subcontract / consultancy / sub- consultancy dispute to the *Adjudicator* at the same time as the main Agreement referral. The *Adjudicator* will then decide the disputes together and references to the Parties for the purposes of the dispute will be interpreted as including the Subcontractor / consultant / sub-consultant as appropriate. The Parties shall comply with any reasonable request by the *Adjudicator* for more time to decide the disputes referred to the *Adjudicator*.
- 2.14 The *Adjudicator* may:
- 2.14.1 make directions for the conduct of the Dispute
 - 2.14.2 review and revise any action or inaction of the Employer related to the Dispute and alter a quotation which has been treated as having been accepted
 - 2.14.3 take the initiative in ascertaining the facts and the law related to the Dispute
 - 2.14.4 instruct a Party to provide further information related to the Dispute within a stated time and
 - 2.14.5 instruct a Party to take any other action which it considers necessary to reach its decision and to do so within a stated time.
- 2.15 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make its decision based upon the information and evidence it has received.
- 2.16 The Adjudicator shall consider any relevant information submitted to it by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- 2.17 A communication between a Party and the Adjudicator must be communicated to the other Party at the same time.
- 2.18 Save as required by law, the Parties and the Adjudicator shall keep information relating to the Dispute confidential.

- 2.19 If the Adjudicator's decision includes assessment of additional cost or delay caused to the *Contractor*, it shall make its assessment in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, payment of the sum decided by the *Adjudicator* will be due not later than seven (7) days from the date of the decision or the final date for payment of the notified amount, whichever is the later.
- 2.20 The *Adjudicator* shall decide the Dispute and notify the Parties of its decision and its reasons within twenty eight (28) days of the Dispute being referred to it. This period may be extended by up to fourteen (14) days with the consent of the Parties or by any other period agreed by the Parties. The Adjudicator may in its decision allocate its fees and expenses between the Parties.
- 2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and expenses of the adjudication, excluding its remuneration and expenses which are dealt with in the preceding paragraph, as between the Parties.
- 2.22 Unless and until the Adjudicator has notified the Parties of its decision the Parties shall proceed as if the matter disputed was not disputed.
- 2.23 If the Adjudicator does not make its decision and notify it to the Parties within the time provided by this contract the Parties and the Adjudicator may agree to extend the period for making its decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned.
- 2.24 The Adjudicator's decision is binding on the Parties unless and until revised by the courts and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by the contract that it is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the courts.
- 2.25 The Adjudicator may on its own initiative or on the application of a Party correct its decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to the Parties to the contract. Any correction of a decision forms part of the decision.
- 2.26 Unless the Parties agree otherwise, a Party must not refer any Dispute under or in connection with the contract to the courts unless it has first been decided by the Adjudicator in accordance with the contract.

- 2.27 If, after the Adjudicator notifies its decision, a Party is dissatisfied, that Party may notify the other Party of the matter which it disputes and state that it intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the Adjudicator's decision.
- 2.28 The court has the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Employer* relating to the Dispute. A Party will not be limited in court proceedings to the information or evidence put to the *Adjudicator*.
- 2.29 A Party shall not call the *Adjudicator* as a witness in court proceedings.

3 JOINDER

- 3.1 If a Dispute arising under this contract raises issues of fact or law which are the same as, or relate to issues raised in an unresolved dispute between the *Employer* and any Other (a "Related Dispute"):
- 3.1.1 the *Employer* may require a representative of the parties in the Related Dispute to meet with the parties under the contract and endeavour to resolve both the Related Dispute and the Dispute; and
- 3.1.2 the *Employer* may refer the Related Dispute to an adjudicator or court to which the Dispute has been referred under the or may refer the Dispute to an adjudicator or court to which the Related Dispute had been referred and the proceedings shall be consolidated, save where the adjudicator or court shall in its absolute discretion determine that it is not possible to consolidate the proceedings; and
- 3.1.3 any dispute as to whether the Dispute raises issues of fact or law which are the same as or related to issues of fact or law in the Related Dispute shall be resolved by the adjudicator or court to which the Dispute and the Related Dispute have been referred, provided that, if the adjudicator or court decides that such issues of fact or law do not arise in the Related Dispute this clause 3 shall cease to apply; and
- 3.1.4 the adjudicator to whom the Dispute and the Related Dispute have been referred shall have power to make such decisions, directions and all necessary orders and awards in respect of the Dispute and the Related Dispute in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to it.

- 3.2 The Parties may only refer a Related Dispute to the *Adjudicator* appointed in relation to a Dispute if the *Adjudicator* has received particulars of the Related Dispute within seven (7) days of the referral of the Dispute to the adjudicator under the contract.

4 FINAL AND BINDING DECISION

The Parties may agree that the *Adjudicator's* decision shall be final and binding and shall finally determine any Dispute, or in the absence of such agreement may otherwise refer such Dispute to the courts of England and Wales sitting in Cardiff (save where the *Employer* directs that the High Court in London (or elsewhere) shall have jurisdiction) for further determination.

Appendix 7

Draft Trust deed for Project Bank Account

TRUST DEED

This agreement is made between the *Employer*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between

..... and

for

..... (the Works).

THIS DEED IS DATED THE [•] DAY OF [•] 20[•]

PARTIES

- (1) **Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at QED Centre, Main Avenue, Treforest Industrial Estate, Pontypridd, Rhondda Cynon Taff, CF37 5YR (the "**Employer**");
- (2) **[INSERT NAME OF CONTRACTOR]** (Company Number **[INSERT NUMBER]**), whose registered office is at **[INSERT REGISTERED ADDRESS]** (the "**CONTRACTOR**"); and
- (3) **[INSERT NAME OF NAMED SUPPLIER]** (Company Number **[INSERT NUMBER]**), whose registered office is at **[INSERT REGISTERED ADDRESS]** (the "**Named Supplier**").

BACKGROUND

- (A) The *Employer* and the *CONTRACTOR* have entered into a contract for the works.
- (B) The Named Suppliers have entered into contracts with the *CONTRACTOR* or a Subcontractor in connection with the Works.
- (C) The *CONTRACTOR* has established a Project Bank Account to make provision for payment to the *CONTRACTOR* and the Named Suppliers.

AGREEMENT

The parties to this deed agree that:

- 1 sums due to the *CONTRACTOR* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *CONTRACTOR* for distribution to the *CONTRACTOR* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- 2 further Named Suppliers may be added as parties to this deed with the agreement of the *Employer* and *CONTRACTOR*. The agreement of the *Employer* and *CONTRACTOR* is treated as agreement by the Named Suppliers who are parties to this deed,
- 3 this deed is subject to the *law of the contract* for the Works,
- 4 the benefits under this deed may not be assigned.

Employer

CONTRACTOR

[Named Supplier]

[Named Supplier]

Appendix 8:
Draft Joining Deed for Project Bank Account

- This agreement is made between the *Employer*, the *CONTRACTOR* and
(the Additional Supplier).
- Terms in this deed have the meanings given to them in the contract between
- and
- for
-(the Works)

- THIS DEED IS DATED THE [•] DAY OF [•] 20[•]
- PARTIES
 - **Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at QED Centre, Main Avenue, Treforest Industrial Estate, Pontypridd, Rhondda Cynon Taff, CF37 5YR (the "**Employer**");
 - [INSERT NAME OF CONTRACTOR] (Company Number [INSERT NUMBER]), whose registered office is at [INSERT REGISTERED ADDRESS] (the "**CONTRACTOR**"); and
 - [INSERT NAME OF ADDITIONAL SUPPLIER] (Company Number [INSERT NUMBER]), whose registered office is at [INSERT REGISTERED ADDRESS] (the "**Additional Supplier**").
- BACKGROUND
 - The *Employer* and the *CONTRACTOR* have entered into a contract for the *CONTRACTOR* Works.
 - The Named Suppliers have entered into contracts with the *CONTRACTOR* or a Subcontractor in connection with the Works.
 - The *CONTRACTOR* has established a Project Bank Account to make provision for payment to the *CONTRACTOR* and the Named Suppliers.
 - The *Employer*, the *CONTRACTOR* and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.
- AGREEMENT
 - The Parties to this deed agree that:
 - the Additional Supplier becomes a party to the Trust Deed from the date set out below,
 - this deed is subject to the *law of the contract* for the Works,

- the benefits under this deed may not be assigned.

Executed as a Deed by [•]:

Employer

CONTRACTOR

[Additional Supplier]

Appendix 9

Form of Parent Company Guarantee

Date: [•]

- (1) AMEY RAIL LIMITED ("Contractor")
- (2) AMEY UK PLC ("Guarantor")
- (3) TRANSPORT FOR WALES ("Employer")

Parent Company Guarantee

relating to the Design and Build of the Taffs Well Depot

THIS AGREEMENT IS MADE THE DAY OF 2021

BETWEEN

- (1) **AMEY UK PLC** (company number 04736639) whose registered office is at the Chancery Exchange, 10 Furnival Street, London EC4A 1AB (the "**Guarantor**"); and
- (2) **AMEY RAIL LIMITED** (company number 02995531) whose registered office is at the Chancery Exchange, 10 Furnival Street, London EC4A 1AB (the "**Contractor**"); and
- (3) **Transport For Wales** (company number 09476013) whose registered office is 3 Llys Cadwyn, Pontypridd, Wales, CF37 4TH (the "**Employer**")

BACKGROUND

- (A) The Employer has appointed the Contractor to carry out and complete the Works in relation to the design and build of a rail depot and associated works known as the Taffs Well Depot.
- (B) The Guarantor has agreed to guarantee the Contractor's due performance of its duties or obligations under the Conditions of Contract.

CONSIDERATION

In consideration of the payment of £1 by the Employer to the Guarantor, receipt of which the Guarantor acknowledges, the Guarantor has agreed to enter into this agreement with the Employer.

AGREED TERMS

DEFINITIONS

- 1.1 The following definitions and rules of interpretation apply in this deed:

Conditions of Contract	an agreement in writing dated [•] and made between the Employer and the Contractor under which the Contractor agreed to carry out and complete the Works / Services
Insolvency Event	a party suffers an insolvency event if: (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable

to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over it;
- (e) the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver
- (f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets;
- (g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- (h) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or

- (i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Working Day a day other than a Saturday or Sunday, or a public holiday in Wales.

Works the carrying out and completion of the Works / or Services as set out in the Conditions of Contract and performed by or on behalf of the Contractor under the Conditions of Contract

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.11 A reference to this deed or to any other deed, agreement or document referred to in this deed is a reference to this deed or such other deed, agreement or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.12 References to clauses are to the clauses of this deed.

1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

GUARANTEE

2.1 The Guarantor guarantees the due and punctual performance by the Contractor of the Contractor's duties and obligations to the Employer under the Conditions of Contract.

2.2 If the Contractor fails to observe or perform any of its duties or obligations to the Employer under the Conditions of Contract, or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Employer under or in connection with the Conditions of Contract, the Guarantor will, as soon as reasonably practicable (but subject to the terms of Clause 7 of this Guarantee), either

(i) perform any such activity and rectify any stipulation in the Conditions of Contract in respect of which the Contractor is in breach or has failed to perform or observe or

(ii) pay to the Employer any loss or damage or expense which the Employer may incur by reason of any default on the part of the Contractor in performing and observing the Conditions of Contract. Where the Guarantor does not intend to perform the Contractor's obligations as provided for at (i), the Guarantor shall notify the Employer that this is the case promptly, and thereafter the Guarantor shall make payment of the sums referred to at (ii).

2.3 If the Contractor suffers an Insolvency Event or if the Employer terminates the Contractor's appointment under the Conditions of Contract due to breach by the Contractor, the Guarantor shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such Insolvency Event or termination and shall, on first written demand, pay to the Employer without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense.

AMENDMENTS TO THE CONDITIONS OF CONTRACT

3.1 The Conditions of Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Contractor's duties, obligations and liabilities under the Conditions of Contract as modified, amended or supplemented) shall not be affected by:

3.1.1 any such modification, amendment or supplement; or

3.1.2 any invalidity, avoidance or termination of the Conditions of Contract; or

- 3.1.3 any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor. The terms of this deed shall apply to the terms of any such compromise as they apply to the Conditions of Contract.

EMPLOYER DOES NOT HAVE TO PURSUE CONTRACTOR

4. The Employer does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this deed.

INSOLVENCY OF CONTRACTOR

5. Without affecting clause 2.3 If the Contractor suffers an Insolvency Event or if the Employer terminates the Contractor's appointment under the Conditions of Contract due to breach by the Contractor, the Guarantor shall indemnify the Employer against all loss, debt, damage, interest, cost and expense incurred by the Employer by reason of such Insolvency Event or termination and shall, on first written demand, pay to the Employer without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense., if the Contractor suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this deed.

PRIORITY OF CLAIMS AGAINST CONTRACTOR

6. As long as any liability incurred by the Contractor to the Employer guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect (or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

LIMIT OF LIABILITY

7. The Employer may not recover any more under this deed in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter, net of any set off. The Employer may not start proceedings against the Guarantor under this deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred. The Guarantor shall be entitled to rely on all limitations and have available to it all defences, counterclaims and rights of set-off as are available to the Contractor under or pursuant to the Conditions of Contract.

ASSIGNMENT

- 8.1 The Employer may assign or charge the benefit of this deed to any person to whom the Employer lawfully assigns or charges the benefit of the Conditions of Contract.

- 8.2 The Employer shall notify the Guarantor of any assignment. If the Employer fails to do this, the assignment shall still be valid.
- 8.3 The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 8.1 The Employer may assign or charge the benefit of this deed to any person to whom the Employer lawfully assigns or charges the benefit of the Conditions of Contract. may not recover any sum under this deed because that person is an assignee and not a named party to this deed.
- 8.4 The Guarantor and the Contractor may not assign or charge the benefit of this deed without the Employer's written consent.
- 8.5 The Employer shall be entitled to assign, novate or otherwise transfer all of its rights and obligations under this Agreement to the ODP immediately prior to any expiry or termination of the ODP Grant Agreement without the consent of the Contractor. If the Employer exercises its rights under this clause then the Contractor shall fully co-operate with the Employer to achieve such assignment, novation or transfer, including by promptly entering into any other documents reasonably requested by Employer in relation to the exercise of such rights

NOTICES

- 9.1 Any notice to be given under this agreement shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by special or recorded delivery post to the address of the relevant party shown on page 1 or such other address as may be notified by a party to the other party from time to time.
- 9.2 If the notice is sent by special or recorded delivery post, it shall be deemed to be received two (2) Working Days after the day it was posted.
- 9.3 If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered if it is delivered before 5.00 pm on a Working Day, failing which it is deemed received on the next Working Day.
- 9.4 A notice given under or in connection with this agreement is not valid if sent by email.
- 9.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

THIRD PARTY RIGHTS

10. No one other than a party to this deed, their successors and permitted assignees, shall have any right to enforce any of its terms.

GOVERNING LAW AND JURISDICTION

- 11.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.
- 11.2 Each party irrevocably agrees that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Employer directs that the High Court in London (or elsewhere) shall have jurisdiction) to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).
- 11.3 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 **Amey UK plc** acting by a director and its secretary or by two directors:

Director

Director / Secretary

Executed as a Deed by **Amey Rail Limited** acting by a director and its secretary or by two directors:

Director

Director / Secretary

Signed as a Deed by **TRANSPORT FOR WALES** acting by one director in the presence of a witness:

Signature of Director

Signature of Witness

Name of Witness

Address of Witness

.....

Occupation

Appendix 10

Key Equipment

- Carriage Wash Machine
- Automated Test Facility for wheel set and associated equipment monitoring (AVIS)
- Wheel Lathe
- Depot Protection system
- Lifting jacks
- Overhead travelling crane
- Retractable OHL
- Mobile access platforms
- Forklift
- Painting facility
- Shunter
- Access control systems – biometric

Annex 7

Key Subcontractors

The following, and any other as agreed from time to time between the parties, are to be regarded as a Key Subcontractor:

1. Alun Griffiths - Civils & Building
2. NG Bailey – M&E
3. Sweet Construct - Fit out (TBC)
4. HIMA-SELLA – Signalling PLC
5. TBC - Permanent way track work
6. A&M – E&P works
7. Arcadis - Design

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