

Energetics Design and Build Limited - Terms and Conditions for New Connections

Conditions A: Core Conditions

1. Definitions and Interpretation

1.1 Definitions

The following terms shall be defined as set out below.

- 1.1.1 **"Acceptance Form"** means the form of acceptance by You of the Tender.
- 1.1.2 **"Adjoining Land"** means land owned by a person other than You, not being an adopted highway, where part of the Works are to be undertaken which adjoin the Site.
- 1.1.3 **"Adjoining Owner"** means the owner (or, at the discretion of the relevant Network Operator, the lessor) of Adjoining Land.
- 1.1.4 **"Adoption"** means the transfer of all legal and beneficial rights, title, and interests in the Works to the relevant Adopting Network Operator, and "Adopt", "Adopted" and other cognate expressions shall be construed accordingly.
- 1.1.5 **"Adopting Network Operator"** means the Network Operator that shall Adopt some or all of the Works and being whichever of the following is named in the Tender]:
 - 1.1.5.1 in the case of electricity – LMEL,
 - 1.1.5.2 in the case of gas – LMGL
 - 1.1.5.3 in the case of heat – LMHL,
 - 1.1.5.4 in the case of water – IWSL, or failing which the Incumbent Water Company, as the case may be, and
 - 1.1.5.5 in the case of sewerage – IWSL, or failing which the Incumbent Sewerage Company, as the case may be.
- 1.1.6 **"Affiliate"** means any subsidiary of a party, any holding company of a party, and any subsidiary of any such holding company (where "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 of the Companies Act 2006).
- 1.1.7 **"Applicable Law"** means any law which is legally binding in England and Wales and / or Scotland from time to time which is applicable to a party in relation to its obligations under this Contract, including but not limited to, any statute, bye-law, ordinance, regulation, order, consent(s), directive, standard, guideline, notification, instruction, regulatory policy, code (including any industry code), guidance, administrative power, exercise of royal prerogative or common law or equity, and any ruling, directives, standards, policies or requirements of any Competent Authority which has jurisdiction in relation to a party to the Contract or the manner in which the activities contemplated by it are conducted.
- 1.1.8 **"Asset Adoption Agreement"** means an agreement between Us and the relevant asset manager on behalf of the Adopting Network Operator under which the Adopting Network Operator agrees to Adopt the Works in accordance with the terms and conditions stated therein.
- 1.1.9 **"Base Date"** means the date of the Acceptance Form.
- 1.1.10 **"CDM"** means the Construction (Design and Management) Regulations 2015.

- 1.1.11 **“Change”** means a Client Change, a Contractor Change or a Change in Law Change.
- 1.1.12 **“Change in Law”** means:
- 1.1.12.1 the coming into effect of any Applicable Law that is not in effect as at the Base Date,
 - 1.1.12.2 the modification, repeal or replacement of any Applicable Law after the Base Date, and
 - 1.1.12.3 a change to or clarification in the interpretation or application by any Competent Authority of any Applicable Law after Base Date.
- 1.1.13 **“Change in Law Change”** means a change that is required to comply with a Change in Law.
- 1.1.14 **“Client”** means the person, company or other entity with whom We have agreed to provide the Works and named as the Customer in the Tender, and any legal successors in title to the Client and any assignee of the Client. **“You”** or **“Your”** and any cognate expressions shall be construed accordingly.
- 1.1.15 **“Client Change”** means a Variation that is initiated by You and which is not a Change in Law Change.
- 1.1.16 **“Client Notices”** means any notices to be given by You prior to the commencement of the Works on Site or any part thereof as set out in the Tender.
- 1.1.17 **“Commencement”** means the earlier of the date on which We (a) receive the Acceptance Form, or (b) begin performance of the Contract.
- 1.1.18 **“Competent Authority”** means the Gas and Electricity Markets Authority, the Water Services Regulation Authority, Water Industry Commission for Scotland, and any court, local, national, or supranational agency or authority, inspectorate, minister, ministry, administrative or regulatory body, authority, official or public or statutory person having (in each case) jurisdiction over either or both of the parties, the Contract or the subject matter of the Contract.
- 1.1.19 **“Conditions”** means these Conditions A: Core Conditions for New Connections, and only to the extent applicable:
- 1.1.19.1 Conditions B: Conditions for Clean Water Connections, and
 - 1.1.19.2 Conditions C: Conditions for Sewerage Connections.
- 1.1.20 **“Confidential Information”** means all know-how, processes, designs, software, programmes, source or object codes, databases, specifications, data, drawings, licence codes, security configuration, trade secrets, pricing, any and all other information made available by one party to the other or which a party has come into the possession of whether directly or indirectly, and the terms of the Contract.
- 1.1.21 **“Connection”** means the number and nature of those connections to be connected to the Works as more particularly described the Tender.
- 1.1.22 **“Consent”** means any consent, authorisation, permission, licence, or similar thing necessary to perform the relevant activity, whatever that thing is called but excluding Land Rights.
- 1.1.23 **“Contestable Works”** means work that can be undertaken by an approved contractor such as Us and as more particularly specified in the Tender.

- 1.1.24 "**Contract**" means the agreement between You and Us for the execution of the Works made up of the:
- 1.1.24.1 Conditions,
 - 1.1.24.2 Tender,
 - 1.1.24.3 Acceptance Form,
 - 1.1.24.4 Specification,
 - 1.1.24.5 all other schedules attached or referred to therein,
 - 1.1.24.6 Developer's Pack, and
 - 1.1.24.7 if there is any conflict or difference between any part of the Contract, the parts take precedence in the order set out above (with the Conditions taking priority).
- 1.1.25 "**Contractor**" means Energetics Design and Build Limited (company number SC234695) and having its registered office at Fenick House, Lister Way, Hamilton International Technology Park, Glasgow, G72 0FT "**We**" or "**Us**", or "**Our**" and any other cognate expressions shall be construed accordingly.
- 1.1.26 "**Contractor Change**" means a Variation that is initiated by Us and which is not a Change in Law Change.
- 1.1.27 "**Contractor's Equipment**" means all appliances, equipment or things of whatsoever nature required for the purposes of the Works but does not include Plant, materials or other things intended to form or forming part of the Works.
- 1.1.28 "**Contract Price**" means the sum payable by You to Us for the execution of the Works (referred to as the "quotation" or the "Total Price" in the Payment Schedule within the Tender).
- 1.1.29 "**Cost(s)**" means all expenses and costs incurred by Us (including overhead and financing charges allocable thereto) but does not include any allowance for profit.
- 1.1.30 "**Data Protection Legislation**" means all legislation and regulatory requirements in force from time to time relating to the processing, protection and handling of Personal Data and the privacy of electronic communications, including, without limitation, any data protection legislation from time to time in force in the United Kingdom including the Data Protection Act 2018 or any successor legislation.
- 1.1.31 "**day**" means a calendar day.
- 1.1.32 "**Defect**" means:
- 1.1.32.1 any defect in the design of the Works,
 - 1.1.32.2 any defect in material or workmanship in relation to the Works,
 - 1.1.32.3 any defect arising from Our act, neglect, default, or omission in relation to the Works, and
 - 1.1.32.4 any defect arising because the Works fail to comply with the Contract, but excluding any defect arising because of:
 - 1.1.32.5 user abuse, vandalism, or improper operation,

- 1.1.32.6 incorrect or misleading information provided by You or on Your behalf,
- 1.1.32.7 Your breach or default of obligations under this Contract,
- 1.1.32.8 Your failure to maintain, or secure, the Works,
- 1.1.32.9 damage caused by You or a third party or by the carrying out of Your Works or works by others which impact on the Works.
- 1.1.33 **“Development”** means the development of the Site to be procured by You.
- 1.1.34 **“Documents”** means the documents and other information in any media produced by or on behalf of Us in connection with the Works.
- 1.1.35 **“Encumbrances”** means any debt, assignment, option, encumbrance charge, security, adverse claim, lien, hire purchase, conditional sale or credit sale or any other interest or rights of any other person.
- 1.1.36 **“Event of Force Majeure”** means an exceptional event or circumstance:
 - 1.1.36.1 which is beyond the reasonable control of the party affected by it,
 - 1.1.36.2 which such party could not reasonably have provided against before entering into the Contract,
 - 1.1.36.3 which, having arisen, such party could not reasonably have avoided or overcome,
 - 1.1.36.4 which is not substantially attributable to the other party,
 - 1.1.36.5 which materially and adversely affects the ability of the affected party to fulfil its obligations under the Contract, and
 - 1.1.36.6 such events shall include, without limitation, acts of God, riots, war, acts of terrorism, industrial disputes, protests, fire, flood, storm, tempest, explosion, breakdown of essential machinery or equipment, pandemic, epidemic or other viral outbreaks and national emergencies.
- 1.1.37 **“Good Industry Practice”** means the exercise of that degree of skill, care and diligence reasonably expected of an operator of the same size and type as the relevant party experienced in carrying out works for a project comparable in size, scope and complexity within the utility connection and civil engineering industry in the same or similar circumstances and conditions.
- 1.1.38 **“Insolvency Event”** means where a party is unable to pay its debts within the meaning of the Insolvency Act 1986 s123 or is the subject of a bankruptcy notice or petition or a bankruptcy order or goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of the party’s creditors, or if any act is done or event occurs (which under the Applicable Law of any competent jurisdiction) has a similar effect to any of these acts or events.
- 1.1.39 **“IP Rights”** means all intellectual and industrial property of any kind whatsoever including patents, utility models, trademarks, trade and business names, logos, domain names, copyright, moral rights, know-how, rights to prevent passing off or unfair competition, database rights, rights in designs and all other intellectual property rights in each case whether registered or unregistered and including applications or rights to apply for them anywhere in the world, together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions of the same.

- 1.1.40 “**Incumbent Water Company**” has the meaning given to it in Conditions B.
- 1.1.41 “**Incumbent Sewerage Company**” has the meaning given to it in Conditions C.
- 1.1.42 “**IWSL**” means Icosa Water Services Limited, a company incorporated in England and Wales with company number 10479916 and having its registered office at Sophia House, 28 Cathedral Road, Cardiff, United Kingdom CF11 9LJ and its successors and assignees.
- 1.1.43 “**Land Owner**” means the freehold owner (or at the discretion of the relevant Network Operator, a lessor) of the land in which the Works are to be installed (and may include an Adjoining Owner for the purposes of any Adjoining Land).
- 1.1.44 “**Land Rights**” means such rights, titles, and interests in or over land as the Network Operator may require including wayleaves, easements, servitudes, leaseholds and freehold transfers and dispositions.
- 1.1.45 “**Land Transfer**” means the transfer of whole or part of Your interest in the Site to a third party prior to Substantial Completion of the Works, but excluding the transfer of that part or those parts of the Site in respect of which the Works have been Adopted by the Adopting Network Owner.
- 1.1.46 “**LMEL**” means Last Mile Electricity Limited, a company incorporated in Scotland under company number SC234694 and having its registered office at Fenick House, Lister Way, Hamilton International Technology Park, Glasgow, United Kingdom G72 0FT and its successors and assignees.
- 1.1.47 “**LMGL**” means Last Mile Gas Limited, a company incorporated in Scotland under company number SC303150 and having its registered office at Fenick House, Lister Way, Hamilton International Technology Park, Glasgow, United Kingdom G72 0FT and its successors and assignees.
- 1.1.48 “**LMHL**” means Last Mile Heat Limited, a company incorporated in England and Wales under company number 13387039 and having its registered office at Hooper Suite Building 6 Bonds Mill Estate, Stonehouse, Gloucestershire, United Kingdom, GL10 3RF and its successors and assignees.
- 1.1.49 “**Network Operator**” means (as applicable):
- 1.1.49.1 a person licenced under section 7 of the Gas Act 1986,
 - 1.1.49.2 a person licenced under section 6(b) of the Electricity Act 1989,
 - 1.1.49.3 a person appointed under the provisions of the Water Industry Act 1991,
 - 1.1.49.4 a person appointed under the provisions of the Water Industry (Scotland) Act 2002, and
 - 1.1.49.5 an Upstream Network Operator and Adopting Network Operator are deemed to be included in the definition of a Network Operator.
- 1.1.50 “**NJUG**” means the National Joint Utilities Group guidelines on the positioning of underground utilities apparatus for new development sites and in existing roads and streets.
- 1.1.51 “**Non-Contestable Works**” means works that lawfully can only be carried out by or on behalf of the Upstream Network Operator.
- 1.1.52 “**Normal Working Hours**” means between 08:00hrs and 17:00hrs on Mondays to Fridays (inclusive) which are Working Days.

- 1.1.53 “**Off Site Works**” means those parts of the Works that are to be carried out on land not forming part of the Site and out with Our or Your ownership or control. “**Off Site**” shall be construed accordingly.
- 1.1.54 “**Plant**” means machinery, apparatus, equipment, materials, articles, and things of all kinds to be provided under the Contract other than the Contractor’s Equipment.
- 1.1.55 “**Point of Connection (PoC)**” means the designated point on the Upstream Network Operators network that the Works shall be connected.
- 1.1.56 “**Programme**” means the estimated schedule agreed by the parties for the completion of the Works.
- 1.1.57 “**Section**” means the parts or phases into which the Works may be divided as provided in the Programme or otherwise agreed between the parties.
- 1.1.58 “**Site**” means the location where the Works are to be carried out as set out in the Tender, together with so much of the area surrounding the same as We shall with Your consent use in connection with the Works otherwise than merely for the purposes of access, excluding Off Site Works.
- 1.1.59 “**Specification**” means the specification of the Works as detailed within the Tender.
- 1.1.60 “**Substantial Completion**” means intimation by Us to You that the Works (or part thereof) is substantially complete and capable of use, as more particularly described in Clause 5.5.
- 1.1.61 “**Tender**” means Our priced offer to You set out in the document entitled either Letter of Offer or Proposal for the execution of the Works.
- 1.1.62 “**Termination Costs**” means the outstanding balance of the Contract Price in addition to any other Costs, overheads and expenses incurred by Us because of such termination including, but not limited to, sales, design, mobilisation costs, financial charges, the value of any Plant, materials and tools ordered or paid for by Us in respect of the Works, demobilisation and the removal of Contractor’s Equipment, and any consequential labour costs incurred by Us. You shall repay to Us the amount of any asset value paid by or allowed for in the Contract Price by Us, and for the avoidance of doubt shall also include all invoices issued by Us and that are unpaid which shall become immediately due and payable.
- 1.1.63 “**Time for Completion**” means the estimated period for completion of the Works (or any Section thereof) as stated in the Programme (or as extended under the terms of the Contract).
- 1.1.64 “**Upstream Network Operator**” means the Network Operator who owns the network to which the Works shall be connected at the PoC.
- 1.1.65 “**Variation**” means any alteration of the Works whether by way of addition, modification or reduction.
- 1.1.66 “**Variation Notice**” means an intimation or communication in writing provided by one party to the other relating to a Change setting out in as much detail as reasonably possible the reasons for the Variation, the required changes, expected amendments to the Works and anticipated timescales to effect the relevant Variation.
- 1.1.67 “**Working Days**” means a day other than a Saturday, Sunday or a bank or public holiday in England and Wales or Scotland (as appropriate given the location of the Site)..

1.1.68 “**Works**” means the work that is Our responsibility to design, construct, install and commission/energise/pressurise as detailed in the Tender to be carried out by Us in accordance with the Specification including any agreed Variation.

1.1.69 “**Your Works**” means any works and/or activities for which You are responsible as detailed in the Tender. For the avoidance of doubt, any works and/or activities not indicated in the Tender as Works are deemed to be Your Works.

1.2 Interpretation

In the Contract, unless otherwise stated:

1.2.1 References to “clauses” are to clauses of these Conditions.

1.2.2 Headings used shall not affect its interpretation.

1.2.3 References to the plural include the singular and vice versa and references to one gender include the other genders.

1.2.4 Words of inclusion, example or particularisation shall be without limitation.

1.2.5 Reference to any statute, statutory provision, enactment, order, regulation, guidance, technical document, deed, or other similar instrument shall be construed as reference to any such document as amended, replaced, supplemented, consolidated, or re-enacted.

1.2.6 Wherever in the Contract the giving of notice or consent is required, unless otherwise specified such notice or consent shall be in writing. References to “written” or “in writing” shall mean hand-written, type-written or printed and include communications by post and email (unless otherwise stated) but exclude fax.

1.2.7 Any offer made by us and any agreement to perform the Works shall be governed only by these Conditions to the entire exclusion of all other terms or conditions.

1.2.8 Reference to any document includes a reference to it as varied, supplemented, assigned or novated from time to time.

1.2.9 References to people include legal and natural people, firms, unincorporated associations (whether or not with separate legal personality).

1.3 In the event of any inconsistency or discrepancy between the Conditions, the Schedules, an AV Quote, and any documents incorporated by reference, the conflict should be resolved according to the following descending order of priority:

these Conditions;,

the Schedule,

the Tender, then

any document incorporated by reference.

2. Basis of Our Tender, Assumptions and Conditions Precedent

2.1 The Contract is based on the assumptions and the conditions precedent contained in the Tender.

2.2 The Tender is open for acceptance as provided for in the Tender unless a longer period is agreed by Us. We reserve the right to amend or withdraw the Tender at any time prior to Commencement. The Contract shall commence on Commencement.

2.3 The documents forming the Contract are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies they shall be explained and adjusted by us by way of issuing to You an appropriate notice in writing.

3. Our Obligations

3.1 We shall perform and complete the Works in accordance with the Contract, Applicable Law and Good Industry Practice and shall (subject to any provision in the Contract) provide supervision, labour, materials, Plant, transport, and temporary works necessary for this obligation.

3.2 We shall:

3.2.1 liaise with any Network Operator for the purpose of coordinating any Non-Contestable Works,

3.2.2 comply with such reasonable Site rules regarding conduct on the Site, and

3.2.3 submit to You during the progress of the Works within such reasonable times as You may require such Documents as may be specified in the Contract.

3.3 You acknowledge that certain works and/or activities are not part of Our obligations under the Contract, including without limitation, works and/or activities:

3.3.1 specifically excluded in the Tender,

3.3.2 which must lawfully be undertaken by a Network Operator, except where We are permitted to do so under the relevant Asset Adoption Agreement, and

3.3.3 forming part of Your Works.

4. Your Obligations

4.1 Without prejudice to the general provisions of Clause 4, You shall perform and complete Your Works and other obligations under the Contract in accordance with:

4.1.1 the Contract,

4.1.2 Applicable Law. This includes Your CDM obligations as the “client” in relation to the Works. You warrant to Us that you shall during the execution of the Works act as “client” and have, amongst other responsibilities, responsibility for making suitable arrangements for the management of the Development. Where You appoint a third party to act as “client” for the purposes of the CDM You shall procure and warrant that You have procured that such third party shall act as the sole “client” for those purposes. We shall act as “contractor” for CDM purposes and provide You with the information reasonably required for the “client” to comply with their obligations,

4.1.3 Good Industry Practice,

4.1.4 insofar as applicable and relevant, any relevant industry standards and technical standards or guidelines published from time to time by the Network Operator or any other competent industry body, and

4.1.5 NJUG.

4.2 You warrant and guarantee that Your Works (including, for the avoidance of doubt, any substation building, equipment housing, pumping stations, treatment works and associated

engineering works) adopted by the relevant Adopting Network Operator against structural faults for a period of ten years from the date of handover and acceptance.

- 4.3 You shall provide the Client Notices not less than 20 Working Days prior to the required commencement of the Works (and each part thereof) and give Us access to the Site on the dates required by Us during Normal Working Hours to carry out the Works. You shall provide such roads and other means of access to the Site as may be required.
- 4.4 You shall before the commencement of the Works obtain (or procure that there are obtained) all Consents which may be required for the carrying out, completion, commissioning and operation of the Works on the Site and the commencement of their operation and shall confirm to Us in writing (or provide evidence of the same to Us on request) when the same have been obtained. We shall procure any Consents necessary for the construction, installation, commissioning, execution, and operation of any Off Site Works. Consents obtained under Clause 4.3 must be maintained in force for as long as they are required by Applicable Law.
- 4.5 To secure Adoption pursuant to the terms of the Asset Adoption Agreement, You must ensure that the Land Rights are granted to the relevant Adopting Network Operator. If You are not the Land Owner of the Site or there is Adjoining Land, You must procure that the Land Owner grants (to the extent required) the Land Rights. Land Rights must be granted free of charge and before the Works are commissioned or energised and, as such, it is your responsibility to proactively cooperate with the Network Operators to ensure the Land Rights are granted on time. You must ensure (or if You are not the Land Owner, procure) that any transfer, disposition or lease of any part of the Site is subject to the requirement of this Clause. You acknowledge that failure to comply with this Clause 4.5 may result in a delay to Adoption and/or commissioning/energisation/pressurisation processes. We acknowledge the potential complexity of Land Rights for different types of Works and shall provide any and all reasonable support and guidance that You may require in relation to these legal aspects.
- 4.6 Buildings, structures, foundations, approaches or work, equipment, or materials to be provided by You in accordance with the Tender shall be provided within the time specified in the Contract and if no time is specified then same shall be provided without delay, shall be of the quality specified and condition suitable for the efficient transport, reception, installation, and maintenance of the Works.
- 4.7 To the extent it is necessary to perform the Works, You shall procure, at Your cost, that a contract for the supply of gas, electricity, water, wastewater and heat has been entered into relative to the Site and grant to Us the right to use temporary and permanent services including gas, electricity, water, wastewater and heat.
- 4.8 You shall ensure:
 - 4.8.1 that access and egress from the Site or part of the Site where the Works are to be carried out is clear and free of all obstructions (e.g., scaffolding is removed, and clear of vehicles and equipment) and any other impediment that may interfere with Our ability to carry out and complete the Works,
 - 4.8.2 that the Site or part of the Site where Works are to be carried out is safe and suitable for the execution of the Works,
 - 4.8.3 unobstructed access is given to the Site to the relevant Network Operator (together with their contractors) to allow those parties to carry out their statutory rights or obligations, or inspections,
 - 4.8.4 that a ground investigation survey is undertaken by a suitably qualified structural or geotechnical engineer to confirm that the ground conditions on Site are suitable for the proposed Works prior to construction commencing,
 - 4.8.5 the Works can be carried out:

- 4.8.5.1 during Normal Working Hours,
 - 4.8.5.2 in so far as possible, on consecutive Working Days, and
 - 4.8.5.3 if through no fault of Our own this is denied or We arrive at the Site, but the visit must be aborted because You are not able to allow the Works (or Section thereof) to proceed, You shall pay Us Costs incurred by Us. Costs may include an “aborted visit” fee at the rate set out in the Tender.
 - 4.8.6 that no support scaffolding is placed near any excavation route necessary for the Works,
 - 4.8.7 a secure and safe area is made available for storage of Contractor’s Equipment, materials, and Plant, prior to Us carrying out any connection, servicing or metering activity connected with the Works. Security for all Plant and Contractor’s Equipment delivered to Site shall rest solely with You,
 - 4.8.8 You provide all necessary information to Us relating to or affecting the Works,
 - 4.8.9 Your Works (or any other activities preparatory or necessary for the completion of the Works) are carried out promptly and to not delay or disrupt the Works,
 - 4.8.10 meter reading facilities are provided by You in a position acceptable to Us, and
 - 4.8.11 that any buildings to be connected to the Works as stated in the Tender are connected, and that any buildings are constructed to accommodate such materials and equipment as are necessary for the Adopting Network Operator to serve those buildings when they are connected. You must ensure (or if You are not the Land Owner, procure) that any transfer, disposition or lease of any part of the Site to a different Land Owner is subject to the requirements of this Clause 4.8.11.
 - 4.8.12 You acknowledge and agree that in the event of a breach of Clause 4.8.11, We shall be entitled to amend the Contract Price in accordance with Clause 10.
- 4.9 Pursuant to Clause 4.1 where:
- 4.9.1 You are assumed to perform Your Works to a particular standard or in a particular way, and
 - 4.9.2 You have failed to satisfy such assumptions, and
 - 4.9.3 such failure(s) interfere or impact on the Works or their subsequent Adoption by the Adopting Network Operator, and
 - 4.9.4 We are required to step-in to procure the assumptions are subsequently satisfied,
- You shall pay to Us the Costs of Us doing so immediately upon presentation of an invoice for remedying Your failures under Clause 4.1.

5. Starting and Completion

- 5.1 Within a reasonable period after receipt of the Acceptance Form, We shall seek to agree a Programme specifying the Time for Completion.
- 5.2 Notwithstanding Clause 5.1, You acknowledge, and it is agreed that any dates or times cited in the Programme (if applicable) or anywhere else and the timing and sequencing for completion of the Works shall be approximate only. Time for performance by Us shall not be of the essence. Unless otherwise expressly agreed by Us, and subject to the extension of time in accordance with Clause 5.3, We shall endeavour to complete the Works within the Time for Completion and if no Programme has been agreed, within a reasonable period. The times specified may be

extended by the effective period(s) of delay for which We are not responsible, and by those grounds listed at Clause 5.3.

- 5.3 Notwithstanding anything to the contrary, We shall be entitled to an extension of time to the Time for Completion upon any of the grounds below:
- 5.3.1 pursuant to Clause 10,
 - 5.3.2 restrictions caused by nature including but not limited to Sites of Special Scientific Interest, Tree Preservation Orders and the discovery of fossils and antiquities at the Site or any such other notice, order, classification, or intimation issued by a Competent Authority,
 - 5.3.3 suspension of the Works by Us pursuant to Clause 9,
 - 5.3.4 any impediment, prevention, delay, or default, whether by act or omission, by You, including a delay in the provision of Land Rights required in Clause 4,
 - 5.3.5 adverse weather conditions,
 - 5.3.6 strike, lockout, or local combination of workmen affecting any of the trades employed upon the Works save where such events arise upon the Site or concern Our employees and do not arise out of or in connection with a national labour dispute,
 - 5.3.7 an Event of Force Majeure,
 - 5.3.8 delay due to an act or omission of a third party including a Network Operator, or
 - 5.3.9 lack of access to the Site or Your default.
 - 5.3.10 a breach of Your Obligations under Clause 4.
- 5.4 We shall take reasonable steps (if required) to overcome or minimise actual or anticipated delay. We may consult with You on what steps (if any) should so be taken and shall thereafter comply with such reasonable instructions which You give to overcome or minimise actual or anticipated delay. If compliance with any such instruction shall cause Us to incur Costs and We are entitled to an extension of time, the amount thereof shall be added to the Contract Price.
- 5.5 Substantial Completion of the Works (or any Section thereof) shall occur when the Works (or Section thereof) are of satisfactory quality and free from Defects, save for any minor items of incomplete work or minor Defects the existence, completion, or rectification of which would not prevent or interfere with the full use and enjoyment of the Works (or Section thereof), in accordance with Clause 6.10.
- 5.6 Unless otherwise agreed in writing, the Contract Price is based upon the exclusion of any liquidated damages for delayed completion or otherwise.

6. Adoption, Title and Defects

Adoption

- 6.1 You agree and acknowledge:
- 6.1.1 neither You nor a third-party end user shall ever own the Works,
 - 6.1.2 legal and beneficial title of the Works shall ultimately pass to or vest in the Adopting Network Operator on Adoption in accordance with the terms of the relevant Asset Adoption Agreement, and

- 6.1.3 the Works will not be commissioned or energised as the case may be unless and until the Works are Adopted by the Adopting Network Operator.
- 6.2 You undertake and warrant that You shall, at Your cost:
 - 6.2.1 comply fully with Clauses 4.3, 4.4 and 4.5,
 - 6.2.2 perform any necessary obligations without limitation, and
 - 6.2.3 procure that any relevant third party performs any necessary obligation without limitation,to enable:
 - 6.2.4 Us to enter into an Asset Adoption Agreement for the Adoption of the Works, and
 - 6.2.5 the Adopting Network Operator to obtain title to the Works with full title guarantee free from any Encumbrances.

Title

- 6.3 Without prejudice to Clause 6.1, and subject to any contrary provisions within an Asset Adoption Agreement, You acknowledge that title to the Works shall vest in Us and We shall retain title and ownership until such title vests in the Network Operator on Adoption. So we can ensure Adoption by the Adopting Network Operator, You must ensure that all rights, title and interests in any part or materials incorporated into the Works shall be transferred to and vested in Us automatically upon incorporation into the Works. You will not claim ownership of any such parts or materials or allow anyone else to do so.
- 6.4 Prior to Adoption, and notwithstanding Clause 6.3, risk of loss or damage to the Works, which is not a Defect, shall be at Your risk (save to the extent any such loss or damage is caused by Our negligence or breach). If any part of the Works shall suffer such loss or damage, You shall reinstate or make good such loss or damage and be responsible on demand for the cost of reinstatement or making good.

Defects

- 6.5 Other than expressly set out in the Contract, our liability for Defects and various other warranties in respect of the Works is a matter between Us and the Adopting Network Operator and not You or another third-party end user.
- 6.6 Subject to the provisions of this Clause 6 and Clause 16, We confirm that the Works shall be free from Defects.
- 6.7 The following shall apply in respect of Defects identified prior to Adoption of the Works (or a Section thereof):
 - 6.7.1 You must give Us a reasonable opportunity to remedy a Defect,
 - 6.7.2 if You suspect a Defect, You shall notify Us of that in writing and request that We search for the Defect. You shall provide reasonable and substantiated grounds for the request,
 - 6.7.3 We shall undertake a search within a reasonable timeframe,
 - 6.7.4 if no Defect is found, You shall reimburse Us the reasonable Costs incurred by Us in undertaking the search,

- 6.7.5 if a Defect is found, We shall consult with You on the scope of remedial activity required and shall carry out such activity, within a reasonable timeframe, to remedy the Defect at Our cost,
 - 6.7.6 if a Defect is not remedied by Us within a reasonable timeframe, then You may, on giving Us reasonable notice, elect to correct the Defect. In such circumstances We shall only be liable to You for the reasonable costs You incur in remedying the Defect, and
 - 6.7.7 in this Clause 6.7 “reasonable timeframe” shall be a timeframe agreed between the parties acting reasonably in the circumstances.
- 6.8 The following shall apply in respect of Defects identified following the Adoption of the Works (or a Section thereof):
- 6.8.1 pursuant to Clause 6.1.2, the Works shall be the property of the Adopting Network Operator. You acknowledge that any activity required to remedy a Defect shall be subject to their approval, instruction, direction, or control,
 - 6.8.2 the Adopting Network Operator’s decision in relation to any aspects of the Works, including without limitation any Defect, shall be final,
 - 6.8.3 You acknowledge that the Adopting Network Operator may elect to not approve or otherwise not proceed with the remedy of a Defect, and
 - 6.8.4 We shall have no liability to You in any way whatsoever including in respect of the design and/or construction of the Works post Adoption.
- 6.9 Whether pre-or-post Adoption, You shall grant to Us and the Adopting Network Operator such access to the Site as may reasonably be required for the purpose of searching and/or remedying Defects.
- 6.10 Notwithstanding any other provision of this Contract, You agree that Our liability to You for Defects to shall expire on the earlier of:
- 6.10.1 the date the Works (or a Section thereof) are taken into use, or
 - 6.10.2 twelve months after the date of Substantial Completion.

7. Land Transfers

- 7.1 You warrant that pursuant to the Contract You have granted to Us the exclusive right to do the Works and the Adopting Network Operator has the exclusive right to Adopt the Works.
- 7.2 You shall take all steps necessary to ensure that any Land Transfer in respect of the Development gives effect to Clause 7.1, including, without limitation, ensuring any land transfer document or other relevant instrument or contract (an “**Instrument**”) in respect of a Land Transfer includes an express provision:
 - 7.2.1 acknowledging the rights under Clause 7.1,
 - 7.2.2 that the future successor is deemed to accept Your rights and obligations under the Contract (insofar as they relate to the land subject to the Land Transfer) provided such acceptance shall not modify Your rights and obligations in respect of any land which contains part of the Works, but which is not included in the Land Transfer, and
 - 7.2.3 if a future successor subsequently makes a Land Transfer to another person (as a “**subsequent party**”) the future successor shall make express provision in any Instrument between it and the subsequent party to give effect to Clause 7.1.

- 7.3 You agree that a Land Transfer shall not:
- 7.3.1 prejudice Our or Your accrued rights under the Contract. Those provisions of the Contract which are by their nature intended to continue shall continue to apply, and
 - 7.3.2 require the reperformance of any obligation which has already been performed.
- 7.4 In the event You or a future successor breach this Clause 7 We reserve the right to either (at Our option):
- 7.4.1 amend the Contract Price, and / or
 - 7.4.2 terminate the Contract with immediate effect in accordance with Clause 14. For the avoidance of doubt, Termination Costs shall be payable.
- 8. Contract Price and Payment**
- 8.1 You shall pay the Contract Price and any other further sums to be paid by You under the Contract in accordance with this Clause 8.
- 8.2 We may increase the Contract Price:
- 8.2.1 on an annual basis with effect from each anniversary of receipt of the Acceptance Form, in line with the percentage increases in the BCIS General Building Cost Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the Acceptance Form,
 - 8.2.2 in the event that the monthly movement in market indices (relating to, without limitation, metals, plastics and oil) exceeds the average monthly movement in the BCIS General Building Cost Index in the previous 12-month period, with such increase being equal to the differential percentage increase in rates and prices forming part of the Works,
 - 8.2.3 in the event the assumptions and exclusions contained in Our Tender following commencement of the Works reveals additional Costs are payable in accordance with the Tender,
 - 8.2.4 in the circumstances outlined in Clause 5.4,
 - 8.2.5 because of Your failure or delay in performing Your obligations under the Contract in respect to the Works, and/or
 - 8.2.6 pursuant to Clause 7,
 - 8.2.7 pursuant to Clause 10, and/or
 - 8.2.8 any other circumstances set out elsewhere in the Contract which may result in a change to the Contract Price or additional Costs.
- 8.3 Payment of the Contract Price shall be required as follows:
- 8.3.1 In accordance with the Tender,
 - or
 - 8.3.2 where no payments or specific dates are set out in the Tender, at intervals We consider appropriate for the amounts due under the Contract.
- 8.4 Invoices issued by Us shall include amounts for:

- 8.4.1 delivery and installation at the Site of Plant and equipment,
 - 8.4.2 cost of connection to existing utility mains,
 - 8.4.3 Plant or equipment, and
 - 8.4.4 materials delivered to Site to accommodate programmed Works or in relation to materials held Off Site.
- 8.5 Any sum payable pursuant to Clauses 8.3.2 or 8.3.3 shall fall due for payment on the date We request payment (“**Due Date**”).
- 8.6 The final date for payment is thirty (30) days after the Due Date (“**Final Date for Payment**”).
- 8.7 Not later than five (5) days after the Due Date You may issue a notice to Us assessing the amount of payment (“**the notified sum**”) proposed to be made, and the basis on which the amount was calculated in accordance with the Contract. If You do not make an assessment, the assessment in the request for payment is the notified sum.
- 8.8 If You intend to pay less than the notified sum You must notify us not later than seven (7) days before the Final Date for Payment stating the amount considered to be due and the basis on which that sum is calculated (“**Pay Less Notice**”). A Pay Less Notice must be notified to Us in writing.
- 8.9 If payment of any sum due under the Contract remains unpaid following the Final Date for Payment, We shall be entitled to receive interest on the amount unpaid during the period of such delay until payment is made in full. Interest shall be at the rate of four per cent per annum above the base rate of the Bank of England from time to time during the period of delay. We shall be entitled to interest without formal notice and without prejudice to any other right or remedy.
- 8.10 The Contract Price does not include VAT which shall be payable in addition thereto at the appropriate rate upon receipt of a valid VAT invoice.

9. Suspension

- 9.1 If You fail to pay an amount due (which is not the subject of a Pay Less Notice) by the Final Date for Payment of such sum, We may (after giving not less than 7 (seven) days’ written notice to You) suspend performance of the Works until the date of payment of such outstanding amount. If we exercise this right, You must reimburse Us the Costs we reasonably incur.

10. Changes

- 10.1 Where a Change is required during the operation of the Contract this Clause 10 shall apply.

Notice Procedure

- 10.2 Where:
- 10.2.1 a Client Change is needed, You shall serve a Variation Notice on Us,
 - 10.2.2 a Contractor Change is needed, We shall serve a Variation Notice on You, and
 - 10.2.3 a Change in Law Change is needed, either party may serve a Variation Notice on the other.
- 10.3 As soon as reasonably practicable of submitting or receiving a Variation Notice (as the case may be) We shall notify You in writing of:

- 10.3.1 any matter which could impact on the provision of the Works and the scope of Variations required,
- 10.3.2 any matter which could impact on the Contract Price,
- 10.3.3 any matter which could impact or effect on the timescales for Substantial Completion,
- 10.3.4 whether (in Our opinion) relief from compliance with any obligations under the Contract may be required,
- 10.3.5 whether the Change is, in any event, within Our ability to perform, and
- 10.3.6 any other relevant and consequential matters and/or amendments (not being a Variation or adjustment to the Contract Price) that may be required to the terms of the Contract to give effect to the Change.

Change Procedure

- 10.4 As soon as reasonably practicable, and in any event within 20 Working Days of receipt of a Variation Notice, You shall either confirm or reject the Variation Notice in writing (or, if applicable in the case of a Client Change only give notice of the withdrawal of the relevant Variation Notice).
- 10.5 Where You reject or withdraw a Variation Notice:
 - 10.5.1 You shall provide reasonable, written grounds, grounds for doing so (such written reply not to be unreasonably delayed or withheld), and
 - 10.5.2 the parties shall within 20 Working Days of notice of such withdrawal or rejection, use reasonable endeavours to agree how to proceed, including (as appropriate) arranging reasonably necessary meetings and Site visits as may be required to agree a Variation Notice.
- 10.6 Where:
 - 10.6.1 You do not reject or withdraw a Variation Notice, and
 - 10.6.2 implementing the Change is within Our ability, then
 - 10.6.3 We shall implement the Change and Your consent shall be deemed.
- 10.7 Notwithstanding any other terms to the contrary, from time to time the nature of the Works may dictate a need to progress Client Change or Contractor Change without a Variation Notice. Your consent shall be deemed in such cases and the Contract Price amended accordingly. We shall use reasonable endeavours to:
 - 10.7.1 keep such instances to a minimum,
 - 10.7.2 ensure, where practicable, one of Your representatives are made aware of and involved in (verbally) any such Change, and
 - 10.7.3 retrospectively issue a Variation Notice to You.
- 10.8 Clause 10.7 shall not apply to a Change in Law Change.
- 10.9 We shall notify You if, in Our opinion, a Client Change is likely to prejudice or prevent Us from or in fulfilling any of Our obligations under the Contract. If You decide to proceed, any Variation shall be carried out by Us at Your risk and cost.

10.10 Notwithstanding any other terms to the contrary, it is acknowledged by You and Us that any change in law or regulation may result in the Works no longer being lawfully permitted and / or determined by You to be installed on the Development. It is also acknowledged by You that the Contract Price is based on the scope of the Works and number of Connections originally contained in the Tender. It is therefore expressly agreed by You that, in the event that fewer Connections are connected to the Works and Adopted by the Adopting Network Operator (in whole or in part) than originally specified in the Tender, the Contract Price will be amended in order for Us to recover such amounts as We determine, in Our discretion and at all times acting reasonably, We incur as a loss as a result of the events described in this Clause 10.10 which impacts Our calculation of the original Contract Price. Such losses shall include (but are not limited to):

10.10.1 loss of profits as a result of lower asset values being payable by the Adopting Network Operator than originally envisaged by the Contractor when compiling the Contract Price,

10.10.2 loss of anticipated savings as a result of the shared overhead, plant and materials costs applied to the original scope of Works, and

10.10.3 any costs associated with designing an alternative and / or reperforming any obligations which have already been performed hereunder,

and any amounts ascertained under this Clause 10.10 shall be added to the Contract Price.

10.11 Where:

10.11.1 non-performance of Our obligations under the Contract cannot be remedied by a Change, or

10.11.2 You reject a Variation Notice (and any differences between the parties are not able to be resolved pursuant to Clause 10.8.2), then

10.11.3 We shall be entitled to terminate the Contract immediately pursuant to Clause 14 and, for the avoidance of doubt, Termination Costs shall be payable.

Miscellaneous

10.12 Where a Variation is (or is likely to be) required because of a Client Change or Change in Law We must receive reasonable notice to plan in good time. Where Plant is already ordered, manufactured, or being manufactured, or any work done or drawings or patterns made that require to be altered or are no longer required, You shall be liable for the Cost for such Plant and/or alterations.

10.13 For the avoidance of doubt, while every reasonable effort is made for certainty in respect of the Contract Price, the Tender (and the Specification, including in respect of any Off Site Works) is based upon a desktop assessment and/or site survey and a set of standard industry assumptions. In many respects We rely on information provided by You, the Network Operator, and other third parties. From time to time, the allowances and assumptions made in Our design and Tender may require alteration and any such alteration shall be treated as a Variation. This may include, without limitation:

10.13.1 where in the case of work underground or work involving excavation where the actual condition and any obstructions of the ground are not stated, the route and ground conditions assumed in the Tender are not achievable and such conditions or obstructions could not reasonably have been identified (or the extent of their impact on the Works identified) in information provided to Us for the purpose of the Tender, and which would have not been reasonably foreseeable at the date of the Contract to a properly qualified and competent design and build contractor exercising Good Industry Practice (it being understood that the Works shall not be undertaken on contaminated land); or

- 10.13.2 where there are (or are found to be) errors, omissions or discrepancies in drawings and any other written information provided by You, or
 - 10.13.3 the Plant specified in the Specification are not available; or
 - 10.13.4 a Network Operator, at any time, requires Us to make any change to the Works or the design of the Works or requires reinforcement works.
- 10.14 We shall not be in breach of Contract for any non-performance of Our obligations under the Contract during the period the parties are taking steps to agree a Change.
- 10.15 We shall maintain a record of all Changes and (on request) provide copies to You when reasonably required by You.
- 10.16 Any dispute between the parties relating to Changes shall be determined in accordance with Clause 17.

11. Assignment and Sub-Contracting

- 11.1 You shall not assign charge or otherwise transfer the Contract, in whole or in part, without Our prior written approval. We shall be entitled to assign the benefit of the Contract in whole or in part.
- 11.2 We shall be entitled to novate, charge or otherwise transfer any of Our rights and/or obligations under the Contract in whole or in part to any Affiliate by notice in writing to You. Within ten (10) days of receiving a notice from Us, You shall enter into a deed of novation in such form as We may reasonably require with Us and an Affiliate taking or acquiring the whole or substantially the whole of Our interest in the Contract.
- 11.3 We may also subcontract (in whole or in part) performance of Our obligations under the Contract. Any such sub-contracting shall not relieve Us from any liability or obligation under the Contract.

12. Insurance

- 12.1 Without prejudice to any obligations under the Contract or otherwise at law, each party shall at their expense take out and maintain with insurers of good repute for the duration of the Works and until Adoption such policies of insurance as are required under Applicable Law and such other policies of insurance as are appropriate and adequate having regard to its obligations and liabilities under the Contract. Each party shall provide to the other on demand evidence of its compliance with this Clause 12.1.

13. Indemnity

You undertake and covenant to perform any and all of Your obligations under and in connection with the terms of the Contract, and pursuant to any Applicable Law relevant to You in respect of the Contract. You shall indemnify Us from and against all damage, loss, actions, claims, proceedings, costs, and expenses (including legal costs and expenses), losses, liabilities and damages suffered or incurred by Us howsoever arising out of or in connection with the Contract.

14. Termination and Cancellation

Termination

- 14.1 The Contract shall continue until such time as the Works at the Site are complete or the Contract is otherwise terminated pursuant to this Clause 14. For the avoidance of doubt, once the Works (in whole or in part) have been Adopted the expiry or termination of the Contract shall not affect (in any way) the Adopted Network Operator's ownership of, and rights in relation to, the Works.
- 14.2 We may immediately terminate the Contract by written notice to You if You:

- 14.2.1 abandon or otherwise plainly demonstrate an intention not to perform Your obligations under the Contract, or
 - 14.2.2 unreasonably suspend performance of the Contract requirements without reasonable excuse for a period of seven (7) days, or
 - 14.2.3 fail to pay any sum due by the Final Date for Payment and remain in default for a period of 14 days after being notified in writing to make such payment, or
 - 14.2.4 are subject to a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010), or
 - 14.2.5 are in breach of Clause 20.
- 14.3 Either party may immediately terminate the Contract by written notice to the other if:
- 14.3.1 an Insolvency Event occurs, or
 - 14.3.2 the other party is in breach of any of its material obligations under this Contract and (if such breach is remediable) fails to correct or cause to be corrected that breach within 14 days of receipt from the other of the notice of default or make or cause to be made provision for the satisfactory correction of such default within a reasonable time thereafter.
- 14.4 If an Event of Force Majeure continues for more than six months, either party may give written notice of not less than 14 days to the other to terminate the Contract. The notice to terminate must specify the termination date after the date on which the notice is given, and once such notice has been validly given, the Contract shall terminate on that termination date.
- 14.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.6 Upon termination of the Contract (howsoever caused):
- 14.6.1 You shall immediately be liable to Us for the Termination Costs,
 - 14.6.2 We shall make the Works safe,
 - 14.6.3 You shall make Your Works safe,
 - 14.6.4 each party shall promptly return (or allow the other party to collect at reasonable times and upon reasonable notice) any property of the other which is in its possession or control, and
 - 14.6.5 at the option of the relevant party, return or destroy any of the others party's Confidential Information that it has in its possession or control (excluding any Confidential Information reasonably required to satisfy reasonable and lawful record-keeping requirements).

Cancellation

- 14.7 Once a Contract is formed in accordance with Clause 2, it may not be cancelled without Our written consent. In the event We agree to a cancellation the Termination Costs are immediately due to Us.

15. Intellectual Property Rights

- 15.1 Ownership of IP Rights in the Documents shall remain vested in Us (or, if not owned by Us, Our licensors). Subject to the foregoing, as between the parties, any IP Rights vested in a party prior to the Commencement of the Contract shall remain vested in that party, and any IP Rights created by a party during the performance of the Contract shall automatically vest in the party creating it.
- 15.2 Each party grants to the other a non-transferrable, non-exclusive, UK-wide, paid-up, royalty free licence to use such IP Rights vested in or licensed to it, in each case to the extent necessary to perform or receive the benefit of this Contract. The licence We grant to You under this Clause 15.2 shall end on expiry or termination of the Contract and does not include the right to grant sub-licences nor the right to reproduce the Documents for any part of an extension of the Development. The licence You grant to Us under this Clause 15.2 shall be irrevocable because We may need to provide plans, drawings and other documentation to the Network Operator for the purpose of Adoption and shall include the right for Us to grant sub-licences to the Network Operator for that purpose. Each party warrants that it has the right, title, interests, and any Consents necessary to grant the licences given in this Clause 15.2 and agrees to do all things required to perfect such grant. We shall not be liable for any use of the Documents other than for the purposes for which they were prepared.
- 15.3 If at any time You are in default of payment of any fees or other amounts properly due under the Contract, We may suspend further use of the licence on giving 14 days' notice of the intention of doing so. Use of the licence may be resumed on receipt of such outstanding sums.

16. Limitation of liability

- 16.1 We shall not be liable to You for loss of profit or revenue, loss of use of equipment or associated equipment, loss of production or down time costs, loss of opportunity, loss of contract, loss of goodwill, the cost of obtaining any new financing or maintaining any existing financing and consequential or indirect loss.
- 16.2 Save in relation to death or personal injury caused by Our negligence or for any matter for which it is not permitted by law to exclude or limit its liability, and subject to Clauses 6.7.6, 6.10 and 16.5, Our aggregate liability arising under or in connection with the Contract (whether arising in contract, tort, by reason of indemnification, breach of statutory duty, equity or otherwise) shall not exceed an amount equivalent to the value of the Contestable Works as stated in the Tender.
- 16.3 You may not commence any legal action in respect of the Contract against Us following the expiry of 6 years from the date of Substantial Completion or an earlier date agreed by the parties.
- 16.4 You shall not hold our employees, officers, or agents liable in respect of any negligence, default or other liability arising from the delivery of the Works.
- 16.5 We shall have no liability for costs, expenses or losses incurred by You because of any delay to the commencement or completion of the Works, howsoever caused.
- 16.6 You confirm that You do not enter into the Contract in reliance on any oral representation, warranty or undertaking not fully reflected in the terms of the Contract and that no amendment, modification or substitution to the Contract shall be effective unless executed in writing by both parties.

17. Dispute Resolution

- 17.1 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 17.2 The parties shall endeavour, in the first instance, to resolve any dispute which does arise by direct negotiations between senior executives. The parties shall also give serious consideration

to any request from a party to the dispute to refer the dispute to mediation if it cannot be resolved by direct negotiation.

- 17.3 Subject to the Site location either party may at any time refer any dispute or difference arising under the Contract to adjudication in accordance with the provisions of The Scheme for Construction Contracts (England and Wales) Regulations 1998 or Scheme for Construction Contracts (Scotland) Regulations 1998.
- 17.4 The adjudicator shall be either a person agreed by the parties or, on the application of the party who is referring the dispute or difference, an individual to be nominated by the President or Vice President of the Chartered Institute of Arbitrators.
- 17.5 If either party intends to dispute the adjudicator's decision it must serve a notice on the other party stating its intention to refer the dispute for final determination by way of court proceedings. If neither party serves such notice within 28 days of the adjudicator's decision, the adjudicator's decision shall be final and binding on the parties.

18. Confidentiality

- 18.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose the Confidential Information of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 18.2.
- 18.2 Each party may disclose the other party's Confidential Information:
 - 18.2.1 to its shareholders, employees, officers, representatives, contractors, subcontractors, or advisers and to a Network Operator who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers or Network Operator to whom it discloses the other party's Confidential Information comply with this Clause 18, and
 - 18.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3 Clauses 18.1 and 18.2 do not apply to Confidential Information which:
 - 18.3.1 is or becomes publicly known other than by breach of the Contract, or
 - 18.3.2 can be shown to have been known by the receiving party before disclosure by the disclosing party, or
 - 18.3.3 becomes available to the receiving party otherwise than pursuant to this Contract and free of any other restrictions as to its use or disclosure.
- 18.4 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

19. Data Protection

- 19.1 For the purposes of this Clause 19, the terms "**Commissioner**", "**Controller**", "**Data Subject**", "**Processor**", "**Personal Data**", "**Data Subject**" and "**Processing**" shall have the meaning prescribed to them in the Data Protection Legislation.
- 19.2 The parties acknowledge that the factual arrangements between them dictates the role of each party in respect of the Data Protection Legislation. Notwithstanding the foregoing, both parties anticipate that for the purposes of this Contract, We shall be a Data Processor, and You a Data Controller of the Personal Data.

- 19.3 Where applicable, each party shall:
- 19.3.1 process the Personal Data only to the extent and in such manner as is necessary for performing each party' obligations under the Contract,
 - 19.3.2 comply with all applicable requirements under the Data Protection Legislation and use all reasonable efforts to assist the other party to comply with such obligations as respectively imposed on them by the Data Protection Legislation. Neither party shall, by its acts or omissions, cause the other party to breach its respective obligations under the Data Protection Legislation,
 - 19.3.3 implement, maintain and ensure it has in place appropriate technical and organisational measures sufficiently to comply at least with the obligations imposed by the Data Protection Legislation,
 - 19.3.4 not disclose or allow access to the Personal Data to anyone other than the permitted recipients (including each parties employees) and ensure that such permitted recipients are subject to written contractual obligations concerning the Personal Data (including obligations of confidentiality) which are no less onerous than those imposed under this Contract. We shall be entitled to share any Personal Data with our subcontractors in accordance with this Clause 19.3.4,
 - 19.3.5 notify the other party without undue delay on becoming aware of any actual, suspected or threatened Personal Data Breach and/or following receipt of any Data Subject Request or correspondence from the Commissioner, which relates directly or indirectly to the Processing of the Personal Data under this Contract, or to either party's compliance with the Data Protection Legislation ("**ICO correspondence**"),
 - 19.3.6 provide the other party with all reasonable co-operation and assistance required by it in relation to any such Data Subject Request or ICO correspondence,
 - 19.3.7 not to cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written of the other party, and
 - 19.3.8 maintain complete and accurate records and information to demonstrate compliance with this Clause 19.
- 19.4 Each party shall indemnify the other from any losses suffered or incurred by the other party arising out of or in connection with any breach by that party or its employees of this Clause 19.
- 19.5 The provisions of this Clause 19 shall apply during the Contract and after its expiry or termination.
- 20. Compliance**
- 20.1 Each party warrants that it has not done, and in performing its obligations under the Contract, it shall not do, any act or thing that contravenes the:
- 20.1.1 Bribery Act 2010,
 - 20.1.2 Modern Slavery Act 2015,
 - 20.1.3 Criminal Finance Act 2017, or
 - 20.1.4 any other Applicable Law relating to anti-bribery or anti-money laundering or modern slavery.
- 20.2 Each party warrants that it shall have, maintain, and comply with throughout the duration of the Contract a policy designed to ensure compliance with Clause 20.1. Each party shall as soon

as reasonably practicable notify the other in writing on becoming aware of any failure to comply with Clause 20.1.

21. General

21.1 Waiver

21.1.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.1.2 Failure or delay by Us to enforce (in whole or in part) any provisions of this Contract or exercise any right or remedy provided under the Contract or by law shall not be construed as a waiver of that or any other provision, right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.2 Rights and Remedies

21.2.1 The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

21.3 Severance

21.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

21.3.2 If any provision or part-provision of the Contract is deemed deleted under Clause 21.3.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.4 Entire agreement

21.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

21.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract.

21.4.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.5 No partnership or agency

21.5.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

21.5.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21.6 Third party rights

21.6.1 Without prejudice to the rights of the relevant Adopting Network Operator to Adopt, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

21.7 Notices

21.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

21.7.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case), or

21.7.1.2 sent by email to the address specified in the Tender.

21.7.2 Any notice shall be deemed to have been received:

21.7.2.1 if delivered by hand, at the time the notice is left at the proper address,

21.7.2.2 if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting, or

21.7.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.2.3, business hours means: 9.00am to 5.00pm Monday to Thursday and 9.00am to 4.00pm Friday on a day that is not a public holiday in the place of receipt. An email shall not be deemed to have been sent if the sender receives notification of the recipient being out of the office.

21.7.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.7.4 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or other assets or insurance matters, written confirmation of it must be sent by the relevant party to the other as soon thereafter as is reasonably practicable.

21.7.5 Notices under Clauses 14, 20, or notices of breach of Contract may not be served by email.

21.8 Survival

21.8.1 Any provision of the Contract explicitly or implicitly intended to survive termination or expiry of the Contract, including any necessary for their interpretation or enforcement, shall survive such termination or expiry.

21.9 Governing law

21.9.1 The Parties hereby agree that the Contract shall be brought in the courts where the Site is located and shall be governed by and construed in accordance with the laws of England and Wales or Scotland and both parties submit to the exclusive jurisdiction of the English or the Scottish] courts (as applicable).

Conditions B: Water Connections

Conditions A: The Core Terms and Conditions shall apply to water connections in England and Wales except to the extent amended or expanded as set out in these Conditions B

Definitions

Replacements

Delete the definition “**Upstream Network Operator**” and replace with a new definition “**Incumbent Water Company**” and replace all references to “Upstream Network Operator” in the Contract accordingly.

Additions

Add the following definitions:

“**Existing Main**” means that part of the Water Network to which the Self-Laid Main shall connect for the purposes of delivering supplies of potable water to Water Consumers.

“**Final Connection**” means the commissioning of the Self-Laid Main by means of the connection between that main and the Existing Main.

“**Income Offset Allowance**” means a payment made or a sum of money offset against infrastructure charges by the NAV or the Incumbent Water Company (as the case may be) to the Client in respect of new water connections.

“**Incumbent Water Company**” means the Network Operator (not being a Party to the Contract) that owns and operates the Water Network, including the Existing Main.

“**Instrument of Appointment**” means the instrument of appointment as from time to time amended granted under section 8(1) of the Water Industry Act 1991 whereby the Secretary of State appointed IWSL as the undertaker for the areas described therein as from time to time applying.

“**NAV**” means a New Appointee Variation, being, in respect of a Site, a variation made by Ofwat to the Instrument of Appointment following an application by IWSL to Ofwat allowing IWSL to provide services to the Site.

“**Self-Laid Main**” means the new water main (including accessories as defined in the Water Industry Act 1991) to be constructed by us as part of the Works intended to be Adopted.

“**Water Consumers**” means the person who consumes or it is intended shall consume the supply of water delivered or provided through the relevant Network Operator’s network.

“**Water Network**” means the Incumbent Water Company’s water supply assets.

Amendments

Amend the following definitions:

“**Point of Connection (PoC)**” by replacing the words, “the Works shall be connected” with, “a supply of water can flow between the Works and the Water Network”.

“**Termination Costs**” by adding a final sentence, “Additionally You shall repay to Us the amount of any Income Offset Allowance paid by or allowed for in the Contract Price by Us.”

“**Works**” by replacing the meaning with, “the works and services that are Our responsibility in connection with the provision of the Self-Laid Main required to serve the Site, as detailed in the Tender to be carried out by Us in accordance with the Specification including any agreed Variation.”

Clause 2: Basis of Our Tender, Assumptions and Conditions Precedent

Insert new clauses, as follows:

- 2.5 This Contract is based on the Self-Laid Main being Adopted by IWSL pursuant to a NAV. You agree to support the NAV application process by IWSL by:
- 2.5.1 providing a signed letter of support, in the form appended to the Tender, and
 - 2.5.2 any other information or documents which We or IWSL may reasonably require,
 - 2.5.3 at the time You return Your Acceptance Form.
- 2.6 You acknowledge that IWSL cannot progress the NAV application process until all relevant information and documents have been provided. Failure to return and provide any information requested may result in delays out of Our or IWSL's control.
- 2.7 You acknowledge and warrant that a physical connection should not, and warrant that it will not, be made to the Incumbent Water Company's water network at any time before the NAV is granted to IWSL. You must notify Us, and We shall thereafter notify IWSL, of the intention to make such a connection. Failure to do so may result in an illegal connection liable to prosecution and/or the need for the connection to be removed.
- 2.8 Until such time as the NAV is granted, We reserve the right to revoke the NAV option. In this case:
- 2.8.1 the standard process for the Incumbent Water Company shall apply,
 - 2.8.2 We shall be entitled to adjust the Contract Price accordingly including (where applicable) make any adjustment to the asset value allowed for in Our Tender, and
 - 2.8.3 for the avoidance of doubt, We shall be entitled to any part of the Contract Price commensurate to the Works undertaken by Us prior to the NAV option being revoked.

Clause 4: Your Obligations

At Clause 4.4:

Replace, "the Works are commissioned or energised" with, "the carrying out of the Final Connection and Adoption", and

Add a new paragraph before the existing final sentence, "You shall be responsible for the provision of all appropriate land transfer drawings and the completion of any Land Registry forms (and associated documents). Where You are unable to obtain any Land Rights required under this Clause 4.4, IWSL (or Incumbent Water Company, as the case may be) may at its sole discretion (a) elect to use its statutory powers to obtain Land Rights under the Water Industry Act 1991, (b) serve any notices on any relevant Land Owners, and/or (c) negotiate rights of access. You shall pay IWSL's (or Incumbent Water Company's, as the case may be) reasonable costs (including any professional fees and disbursements) incurred in obtaining the same."

Clause 6: Adoption, Title and Defects

Replace, "Works" with, "Self-Laid Main" in all places.

At 6.1.3, replace "the Works will not be commissioned or energised" with "the carrying out of the Final Connection and Adoption will not occur".

At the end of Clause 6.4 insert, “(including any compensation which may be payable by IWSL (or the Incumbent Water Company, as the case may be) for a loss of or failure to provide a water supply)”.

Clause 7: Land Transfers

At Clause 7.1:

Replace, “Works” with, “Self-Laid Main” at both places, and

Insert a new final sentence, “The parties acknowledge IWSL’s exclusive right to Adopt the Self-Laid Main is subject to the grant of the NAV.”

At Clause 7.2:

Replace “Works” with, “Self-Laid Main”.

Clause 8: Contract Price and Payment

Insert new clauses, as follows:

- 8.10 It is assumed that a suitable Point of Connection to supply the Site is available at or near the Site entrance and our Tender assumes that certain charges shall be payable to the Incumbent Water Company for the Off Site main connection to the Incumbent Water Company’s Water Network. These connection charges are payable to the Incumbent Water Company for the Point of Connection. You shall be responsible for payment of these charges. Once the Incumbent Water Company has provided a formal proposal for these works, this information shall be made available to You on an open book basis and must be paid by You within 14 days of invoice.
- 8.11 Infrastructure charges for water (being the charges payable for the connection of premises to a water supply which have never on any previous time been connected to a water supply) are payable by You on a per plot basis. These charges shall be invoiced and payable by You in accordance with any timescales required by IWSL to ensure payment to the Incumbent Water Company in good time. You shall pay to Us any such charges immediately on receipt of invoice. In turn, these charges shall be paid by Us, on a pass-through basis, to IWSL. You shall provide (within 5 days of being requested to do so) all information which may be required for the calculation of such charges.

Clause 14: Termination and Cancellation

At Clause 14.1:

Replace, “Works” with, “Self-Laid Main” in both places.

Conditions C: Sewerage Connections

Conditions A: The Core Terms and Conditions shall apply to sewerage connections in England and Wales except to the extent amended or expanded as set out in these Conditions C.

Definitions

Additions

Add new definitions, as follows:

“Section 104 Agreement” means an agreement for the adoption of sewerage infrastructure substantively in the form prescribed by Ofwat in the Code for agreements for water and sewerage companies operating wholly or mainly in England and which came into effect on 13 November 2017 (as may be amended from time to time).

“Sewerage Works” means the works carried out by You (or on Your behalf) at the Site pursuant to Your obligations under an Asset Adoption Agreement.

“Technical Services” means the services to be undertaken by Us set out more fully in the Tender in relation to the Adoption of the Sewerage Works on IWSL’s behalf, including without limitation:

- Technical approval of Your design pack of the Sewerage Works to be constructed and offered up by You pursuant to the requirements of an Asset Adoption Agreement,
- Carrying out inspections of foul sewers, surface sewers, surface water sewers, and/or sustainable drainage systems are referred to in an Asset Adoption Agreement (and which may include survey by closed circuit television and/or other internal survey methods), and
- any other services related to the Adoption of the Sewerage Works as may be required by IWSL, and
- in accordance with any specification, standards, and procedures which IWSL may require for the Sewerage Works to be Adopted.

The definitions for, **“Instrument of Appointment”** and **“NAV”** as set out in Conditions B shall apply.

Amendments

Amend the following definitions:

“Asset Adoption Agreement” replace the meaning with, “means the Section 104 Agreement”.

“Works” at the end add the words, “but excluding the Sewerage Works.”

“Your Works” amend to read, “means any works and/or activities for which You are responsible as detailed in the Asset Adoption Agreement (as the “Developer” under that agreement).”

Clause 1.2: Interpretation

At Clause 1.2.7:

Insert “and Technical Services” after “Works”.

Clause 2: Basis of Our Tender, Assumptions and Conditions Precedent

Apply Clauses 2.5, 2.6, 2.7 and 2.8 as set out in Conditions B, except to replace in each place they appear:

“Works” with “Sewerage Works”, and

“Incumbent Water Company’s Water Network” with “Incumbent Sewerage Company’s sewerage network”, and

“Incumbent Water Company”, with “Incumbent Sewerage Company”.

Clause 3: Our Obligations

Delete Clause 3.1 and replace it with the following:

“Together with IWSL, We aim to make the Adoption of the Sewerage Works as simple as possible. We are authorised by IWSL to act on their behalf to undertake the Technical Services. We shall provide the Technical Services to You in accordance with the Contract, Applicable Law, Good Industry Practice and in accordance with the reasonable instructions and requirements of IWSL. You must provide all reasonable assistance and cooperation which may be required to enable Us to provide the Technical Services (including without limitation the provision of any and all relevant sewerage records and documents, and at such frequency and times, as We or IWSL reasonably require on request) and any other services which IWSL may request or instruct that We provide on their behalf in respect of the Sewerage Works.”

Replace the text at Clauses 3.2.1 and 3.2.3 with “Not Used.”

Clause 4: Your Obligations

At Clause 4.1:

Insert at the beginning of Clause 4.1 before, “Without prejudice...”:

“You acknowledge that You shall be required to, and agree that You shall, following the grant of the NAV, enter into an Asset Adoption Agreement directly with IWSL and shall procure that any Adjoining Owners shall also enter into the same (where applicable). You acknowledge that We shall not be a party to that agreement.”

Insert a new Clause 4.1.6:

“the Asset Adoption Agreement (and You acknowledge that You shall be subject to a number of warranties and general obligations in respect of the Sewerage Works and their Adoption under that agreement and Your non-compliance may prejudice Adoption of the Sewerage Works).”

Delete Clause 4.2 and replace it, as follows:

“You shall provide any notices, within such timescales, as may be required pursuant to the requirements of the Asset Adoption Agreement, or as We or IWSL may reasonably require, prior to the commencement of the Sewerage Works and give Us access to the Site on the dates required by Us during Normal Working Hours to carry out the Technical Services.”

At Clause 4.3:

Replace “Works” with “Sewerage Works” and insert “pursuant to the Asset Adoption Agreement” between the words, “required for” and “the carrying out”, and

Delete the sentence, “We shall procure any Consents necessary for the construction, installation, commissioning, execution, and operation of any Off Site Works.”

At Clause 4.4:

Replace, “are commissioned or energised” with, “Adopted”, and insert the new paragraph set out in Condition B (replacing “Water Company” with “Sewerage Company”).

Replace “Works” with “Technical Services” at each place it appears at Clauses:

(a) 4.7.1, (b) 4.7.2, (c) 4.7.4, (d) 4.7.5, (e) 4.7.7 and (f) 4.7.8.

At Clause 4.7.8:

Replace “Your Works” with “Sewerage Works”.

At Clause 4.4 and 4.7.10:

Replace “Works” with “Sewerage Works”.

Replace the text at Clauses (a) 4.5, (b) 4.6, (c) 4.7.6, (d) 4.7.9 and (e) 4.8 with “Not Used”.

Clause 5: Starting and Completion

Replace with text at Clauses 5.1 – 5.5 with “Not Used”.

Clause 6: Adoption, Title and Defects

At Clause 6.1:

Insert “Sewerage” prior to, “Works” at all places it appears.

Delete and replace Clause 6.2, as follows:

“You undertake and warrant that You shall, at Your cost, perform any and all necessary obligations including any incumbent upon You under and pursuant to the Asset Adoption Agreement to enable IWSL to obtain title to the Sewerage Works with full title guarantee free from any Encumbrances.”

Delete and replace Clause 6.3, as follows:

“Without prejudice to Clause 6.1, and subject to any contrary provisions within the Asset Adoption Agreement You acknowledge the Sewerage Works shall legally and beneficially belong to You until such title vests on Adoption.”

Delete and replace Clause 6.4, as follows:

“You acknowledge prior to Adoption, risk of loss or damage to the Sewerage Works shall be at Your risk and You must adequately maintain, protect and preserve the Sewerage Works in condition until such time as the Sewerage Works are Adopted. We shall undertake, as required pursuant to the Asset Adoption Agreement (or otherwise required by IWSL) inspections as part of the Technical Services and any replacement of parts of the Sewerage Works that are found to be worn, damaged or otherwise identified as requiring replacement shall be undertaken by You at Your cost. Any remedial action required by IWSL to the Sewerage Works immediately prior to Adoption shall be for You to undertake at Your cost. “

Delete Clauses 6.5 to 6.10 and replace with new Clause 6.5 and 6.6, as follows:

“Liability for Defects and other various warranties in respect of the Sewerage Works shall be set out under the Asset Adoption Agreement.”

“We shall have no liability or responsibility to You in any way whatsoever, including in respect of the design and/or implementation of the Sewerage Works.”

Clause 7: Land Transfer

At Clause 7.1:

Replace “Works” with “Technical Services” and “Sewerage Works” in the first and second places they appear respectively.

Insert a new final sentence, “The parties acknowledge IWSL’s exclusive right to Adopt the Sewerage Works is subject to the grant of the NAV.”

Clause 8: Contract Price and Payment

Replace “Works” with “Technical Services” at each place it appears.

Apply Clauses 8.10 and 8.11 as set out in Conditions B, except to:

Replace “Water Company” with “Sewerage Company” in all places it appears,

Replace “Water Network” with “sewerage network”,

At Clause 8.10 specifically replace “Off Site Main” with “sewer”, insert, “directly to IWSL” between “must be paid by You” and “within 14 days”, and

At Clause 8.11 specifically replace “water supply” with “public sewer” in both places it appears, replace “Us” with “IWSL” in the third sentence, and delete the fourth sentence.

Clause 9: Suspension

Replace “Works” with “Technical Services”.

Clause 10: Changes

Insert a new Clauses [10.17, as follows:

“For the avoidance of doubt, Clause 10 shall not apply to Sewerage Works and You must not vary the Sewerage Works nor make any additional connections not shown in Your designs of the Sewerage Works without first obtaining IWSL’s written consent. We reserve the right to adjust the Contract Price because of any such agreed variations.”

Clause 14: Termination and Cancellation

At Clause 14.1:

Replace “Works” with “Technical Services” in the first sentence and delete the second sentence.

Replace the text at Clause 14.6.2 with “Not Used”.