



B&NES Fire & Security Systems Framework

Procontract Ref. DN768606

BATH AND NORTH EAST SOMERSET COUNCIL (the *Client*)

&

ABCA Systems Ltd (the *Contractor*)

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SECTION 1

FORM OF AGREEMENT

FORM OF AGREEMENT

This Agreement is made on the 13th November 2025

Between

- (1) **Bath and North East Somerset Council** of The Guildhall, Bath BA1 5AW ('the **Client**')
- (2) ABCA Systems Ltd of Cobalt 8, 14 Silver Fox Way, Cobalt Business Park, Newcastle Upon Tyne, Tyne & Wear, NE27 0QJ (company registration number 06294877) ('the **Contractor**')

Whereas

- (A) The Client has a recurring need to procure certain types of maintenance-related works and the Contractor is a provider of such works.
- (B) The Client has pre-qualified the Contractor and other Contractors for the purposes of supplying such works and may wish to appoint the Contractor to provide any of such works
- (C) This Agreement sets out the terms of any Call-off Contract under which the Client may appoint the Contractor to provide any such work and sets out a procedure for placing any such Call-off Contract.

1 Definitions and interpretation

1.1 In this Agreement:

Acceptance is defined in clause 2.4 (and includes an acceptance under clause **Error! Reference source not found.**)

Agreement means this framework agreement

Call-off Contract takes its meaning from clause 2.5 of the Agreement Part A

Commencement Date means the date this framework agreement was made.

Commercially Sensitive Information means the information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data

within the meaning of the DPA 2018. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of clause 6 (Confidential Information));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

conditions of contract is defined in the Contract Data Part 1

Contract Data Part 1 means the contract data part 1 in each Proposal

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Corrupt Act means a breach of clause 8

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Consultant under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

DPA 2018 means Data Protection Act 2018

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Environmental Information Regulations means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Fees Regulations means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Fraud means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679)

Generic Scope means the description of services and related information in the appendix being the descriptive document on the basis of which the Consultant was pre-qualified for the purposes of this Agreement

Intellectual Property Rights or IPR means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

Laws means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Consultant is bound to comply

Proposal means a proposal for a Call-off Contract substantially in the form of the draft letter and its annexes in Schedule 1

Premises means the location where the services are to be supplied, as set out in the Scope

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the contract or any other affairs of the Council and "Regulatory Body" shall be construed accordingly

Schedule of Rates means the schedule of rates in **Error! Reference source not found.**

Staff means all persons employed by the Contractor to perform its obligations under the contract together with the Contractor servants, agents, suppliers and subcontractor used in the performance of its obligations under the contract

Subcontractor means a person, not being the Contractor or any of the Contractor's Staff, which does any work necessary to provide the services

Term means the period of 4 years starting on the Commencement Date

Working Day means any day other than Christmas Day, Good Friday, or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales

Scope means the Scope documentation included in any Proposal

1.2 In this Agreement:

where the context admits, the singular includes the plural, and vice versa;

references to persons include firms and corporate bodies;

any obligation undertaken by more than one person is joint and several;

any reference to legislation includes any relevant amendment, re-enactment or replacement of that legislation and any subordinate legislation or code of practice made or approved under such legislation;

terms used in the *conditions of contract* have the same meaning in this Agreement as in the *conditions of contract*; and

clause headings have no effect.

2 Call-off Contracts

2.1 The Client may from time to time issue a Proposal to the Contractor, substantially completed save as to annexes 2 and 5 of this Agreement, with the addition of any further particulars the Client wishes to include.

2.2 Within 14 days after receiving any Proposal or such other timescale as the Parties may agree, the Contractor shall complete the Proposal and return it to the Client (subject to clause 2.3).

2.3 If the Scope in any Proposal is sufficiently at variance with the Generic Scope as to render the performance (or any risks attending the performance) of any ensuing Call-off Contract substantially different from those contemplated by the Generic Scope, the Contractor may by notice to the Client given within 7 days after it receives the Proposal and stating its reasons, excuse itself from completing the Proposal.

2.4 Within 14 days after the Client receives a Proposal or such other timescale as the Parties may agree, completed by the Contractor in accordance with clause 2.2, it may issue the Contractor with an acceptance of the Proposal (**Acceptance**), subject to the inclusion of any changes to that Proposal the Parties have agreed beforehand.

2.5 A Proposal and its Acceptance create a **Call-off Contract**.

2.6 The Client may not issue an Acceptance before the start or after the end of the Term or after this Agreement has been terminated, but may issue variations to any existing Call-off Contract as required to complete any scheme of works to which the Call-off Contract relates.

2.7 The Client has no obligation to issue the Contractor with any Proposal or Acceptance and is free to employ anyone else to provide any services which could otherwise be procured under this Agreement.

3 Pricing

- 3.1 The Contractor shall price the activity schedule in each Proposal using rates and prices not exceeding the applicable rates and prices in the Schedule of Rates.
- 3.2 If the Schedule of Rates does not contain applicable rates or prices for all of the activities in a Proposal, the Consultant shall use rates and prices not exceeding the rates and prices in the Schedule of Rates where applicable. The Contractor shall price any other activities on a fair and reasonable basis.
- 3.3 The Schedule of Rates shall be fixed for the duration of this Agreement and neither the Schedule of Rates nor any rates or prices for the activities in a Proposal shall be subject to adjustment.
- 3.4 In completing the activity schedule the Contractor shall describe all of the necessary activities in a way which is consistent with the Schedule of Rates, where applicable.

4 Assignment

- 4.1 The Client's entire rights and benefit under this Agreement and any Call-off Contract:
 - (a) may be assigned by absolute assignment to any person; and
 - (b) may be charged and/or assigned by way of security and by way of reassignment on release from or upon the redemption of the security,and references to the Client include its permitted assignees.
- 4.2 The Contractor may not assign or charge the benefit of this Agreement or any Call-off Contract or any right arising under it without the Client's consent, save that the Contractor may assign the right to receive any payment becoming due to it under any Call-off Contract.

5 Confidential Information

- 5.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 5.2 Clause 5.1 shall not apply to the extent that:
 - (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 6 (Freedom of Information);
 - (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;

- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - (e) it is independently developed without access to the other party's Confidential Information.
- 5.3 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the services and who need to know the information, such as the Contractor's insurers or professional advisers, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 5.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.
- 5.5 At the written request of the Client, the Contractor shall procure that those members of the Staff identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 5.6 Nothing in this Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:
 - (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - (b) to any consultant, Contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
 - (c) for the purpose of the examination and certification of the Client's accounts; or
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
- 5.7 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-consultant to whom the Contractor's Confidential Information is disclosed pursuant to clause 5.6 is made aware of the Client's obligations of confidentiality.
- 5.8 Nothing in this clause 5 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

6 Freedom of Information

- 6.1 The Consultant acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

- 6.2 The Contractor shall and shall procure that any sub-contractor shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;
- (a) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within [five] Working Days (or such other period as the Client may specify) of the Client's request; and
 - (b) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 6.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 6.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 6.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 6.4) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Consultant or the services in certain circumstances:
- (a) without consulting the Contractor; or
 - (b) following consultation with the Contractor and having taken their views into account;
- provided always that where clause 6.5 applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.
- 6.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.
- 6.7 The Contractor acknowledges that the Commercially Sensitive Information listed in any Commercially Sensitive Information Schedule issued as part of a Proposal is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause 6.

7 Publicity, Media and Official Enquiries

- 7.1 Without prejudice to the Client's obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 7.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 7.1.

8 Corrupt Acts

8.1 The Contractor warrants that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by:

the Contractor; or

any associated person of the Contractor,

in connection with the procurement or performance of this Agreement or any Call-off Contract.

8.2 For the purposes of clause 8.1 the definition of associated person in s.8 of the Act applies (and includes any SubContractor and any supplier to the Contractor of any Plant or Materials or Equipment).

8.3 If at any time the Contractor has knowledge of or has reasonable grounds to suspect the occurrence of a breach of the warranty in clause 8.1, the Contractor shall promptly notify the Client in writing of such matters within its knowledge, or of such grounds for suspicion, and shall co-operate with the Client in the investigation of such breach or suspected breach.

8.4 The Contractor shall include provisions equivalent to clauses 8.1- 8.3 in each of its contracts with associated persons and shall take all steps necessary to ensure that they are enforced.

8.5 This clause 8 shall survive the termination (for any reason) of this Agreement or any Call-off Contract.

9 Conflicts of Interest

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

9.2 The Client reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

10 Key Personnel

10.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the services to the Client. The Key Personnel shall be responsible for ensuring consistent, timely and effective delivery of the service.

10.2 The Key Personnel shall not be released from supplying the services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

- 10.3 Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the services.
- 10.4 The Client shall not unreasonably withhold its agreement under clauses 10.2 or 10.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

11 Prevention of Corruption

- 11.1 The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or on behalf of the Client or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Client or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 11.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of the Client or any other public body in connection with the Contract.
- 11.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 11.1 or 11.2, the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those clauses.

12 Prevention of Fraud

- 12.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Client.
- 12.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 12.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Client) the Client may:

terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other

arrangements for the supply of the services and any additional expenditure incurred by the Client throughout the remainder of the Term; or

recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this clause.

13 Discrimination

- 13.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 13.2 The Contractor shall take all reasonable steps to secure the observance of clause 13.1 by all Staff and the staff of its sub-consultants if appointed.

14 Environmental Requirements

- 14.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 14.2 Health and Safety
- 14.3 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 14.4 While on the premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working there.
- 14.5 The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 14.6 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the premises in the performance of its obligations under the Contract.
- 14.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Client on request.

15 Modern Slavery Act 2015

- 15.1 The Contractor shall prepare a slavery and human trafficking statement for each financial year in accordance with the Modern Slavery Act 2015 showing:
- 15.2 (a) a statement of the steps the Contractor has taken during the financial year to ensure that slavery and human trafficking is not taking place
- (i) in any of its supply chains, and
 - (ii) in any part of its own business, or
- 15.3 (b) a statement that the Contractor has taken no such steps.

16 Expiry and termination

- 16.1 Either Party may give the other Party 28 days' notice to terminate this Agreement.
- 16.2 This Agreement survives the Term or any termination of this Agreement, for the purposes of any Call-off Contract.

17 Excluded and Excludable Suppliers

- 17.1 In accordance with Regulation 57 of The Procurement Act 2023 the Client may exclude a Contractor who has, since award of the Framework, become an excluded or excludable supplier, from participating in any selection process run in relation to the award of a contract under this Framework.

18 Subcontractor Payments

- 18.1 The Client must ensure that all subcontractor invoices relating to Call-Off Contracts under this Framework, are paid, in full:
- before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Contractor in respect of the sum; or
 - if later, by the date on which the payment falls due in accordance with the invoice,
- subject to the invoice being verified by the Contractor as valid and undisputed. If this does not happen, the Council can publish the details of the late payment or non-payment.

19 Service of notice

- 19.1 The provisions of the conditions of contract for giving notice apply to this Agreement.

20 Governing law

- 20.1 The law of this Contract is English law.

Schedule 1

Draft Proposal and Annexes 1-5

[Date]

Dear Sir/Madam

Proposal for services in connection with ♦, issued under Framework Agreement dated ♦¹.

In accordance with the above Framework Agreement you are requested and required to complete and return this Proposal for the services mentioned above and specified and described in the Scope.

For these purposes:

- (a) the Contract Data Part 1 is in annex 1 to this Proposal;
- (b) you are to complete (and provide the documents required by) the Contract Data Part 2 in annex 2;
- (c) the Special Conditions are in annex 3;
- (d) the Scope is in annex 4; and
- (e) you are to provide a priced Activity Schedule for annex 5.

This Proposal does not give rise to any Call-off Contract unless and until it becomes the subject of an Acceptance.

Please complete this Proposal and return it to us within [14] days.

Yours faithfully

.....

For and on behalf of
Bath and North East Somerset Council

It is agreed

1 Interpretation

In this Agreement (including the recitals) words and expressions shall have the meanings as are respectively assigned to them in the conditions of contract referred to below. Clause headings are for information purposes only and do not affect the interpretation of this contract.

The contract

This Agreement, together with the following documents, constitute the 'contract' and are in the following order of priority:

- 2.1 this Agreement;
- 2.2 the *additional conditions of contract* as set out in Section 4 of this Agreement;
- 2.3 the *conditions of contract* as referred to in clause 3 below, other than the *additional conditions of contract*;
- 2.4 the Contract Data Part 1 and documents identified therein as set out in Section 2 of this Agreement;
- 2.5 the Contract Data Part 2 and documents identified therein as set out in Section 3 of this Agreement;

2 NEC conditions

The *conditions of contract* are the core clauses, the clauses for main Option A, Option W2 for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 and the

additional conditions of contract set out in Section 4 of this Agreement (the 'Additional Conditions of Contract').

3 Appointment

The *Client* appoints the *Contractor* to provide the works in accordance with this contract and the *Contractor* accepts such appointment.

4 Payment

The *Client* pays the *Contractor* in consideration of his providing the works and remedying the Defects the amount due in accordance with this contract.

In **witness** whereof each of the parties have executed this Agreement as a Deed the day and year first before written.

The Common Seal of
Bath and North East Somerset Council
was hereunto affixed in the presence of:



Sealed By: Bath & North East Somerset Council
Sealed Time: 2025/11/13 | 09:43 GMT

Carrie-Ann Evans
.....

[SIGNATURE OF AUTHORISED SIGNATORY]

Executed as a deed by
ABCA Systems Ltd
acting by a director in the presence of

) *Phil Batson*
) Director
) Phil Batson
) Name

Phil Miller
.....
Signature of witness

Phil Miller
Name

7 Osborne villas, Jesmond, ne21ju
Address

.....

.....

SECTION 2

CONTRACT DATA PART ONE

PART ONE – DATA PROVIDED BY THE CLIENT**1 General**

The *conditions of contract* are the core clauses, the clauses for main Option A, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017

Option for resolving and avoiding disputes

W2

Secondary Options

[X2,] [X5,] [X6,] [X7,] [X10,] X11, [X13,]
[X15,] [X16,] [X17,] X18, [X20,] X21,
Y(UK)2, Y(UK)3

The *works* are

The *Client* is

Name

Bath and North East Somerset Council

Address for communications

Lewis House, Manvers St, Bath BA1 1JQ

Address for electronic communications

The *Project Manager* is

Name

Address for communications

Lewis House, Manvers St, Bath BA1 1JQ

Address for electronic communications

The *Supervisor* is

Name

Address for communications

Lewis House, Manvers St, Bath BA1 1JQ

Address for electronic communications

The Scope is in

The Site Information is in

The *boundaries of the site* are

The *language of the contract* is

English

The *law of the contract* is the law of

England and Wales

The *period for reply* is except that

- The *period for reply* for is
- The *period for reply* for is

The following matters will be included in the Early Warning Register

Early warning meetings are to be at intervals no longer than

2 The Contractor’s main responsibilities

If the *Client* has identified work which is set to meet a stated condition by a *key date* The *key dates* and *conditions* to be met are

	condition to be met	key date
(1)		
(2)		
(3)		

3 Time

The *starting date* is

The *access dates* are

part of the Site date

(1)		
(2)		
(3)		

	The <i>Contractor</i> submits revised programmes at intervals no longer than	
If the <i>Client</i> has decided the <i>completion date</i> for the whole of the <i>works</i>	The <i>completion date</i> for the whole of the <i>works</i> is	
Taking over the <i>works</i> before the Completion Date	The <i>Client</i> is/is not willing to take over the <i>works</i> before the Completion Date (Delete as applicable)	
If no programme is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is	

4 Quality management

	The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is	
	The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is	
	The <i>defects correction period</i> is	except that
•	The <i>defect correction period</i> for	is
•	The <i>defect correction period</i> for	is

5 Payment

	The <i>currency of the contract</i> is the	GB Pound Sterling
	The <i>assessment interval</i> is	Monthly
	The <i>interest rate</i> is	2 % per annum above the
	base rate of the	Bank of England bank

6 Compensation Events

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is

If there are additional compensation events

These are additional compensation events

8 Liabilities and insurance

If there are additional *Client's* liabilities

There are additional *Client's* liabilities

- (1)
-
- (2)
-
- (3)
-

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

£5 million

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

£5 million

If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

If the *Client* is to provide any of the insurances

The *Client* provides these insurances from the Insurance Table

stated in the Insurance
Table

(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

If additional insurances
are to be provided

The <i>Client</i> provides these additional insurances	
(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	
The <i>Contractor</i> provides these additional insurances	
(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	

Minimum amount of cover is	
The deductibles are	

Resolving and avoiding disputes

The <i>tribunal</i> is	Arbitration
The <i>arbitration procedure</i> is	RICS Construction and Engineering Arbitration Service Procedure
The place where arbitration is to be held is	England
The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator is	
The Royal Institution of Chartered Surveyors	

The *Senior Representatives* of the *Client* are

Name (1)	
Address for communications	
Address for electronic communications	
Name (2)	
Address for communications	
Address for electronic communications	

The *Adjudicator* is

Name	To be confirmed by the <i>Adjudicator nominating body</i>
Address for communications	To be confirmed by the <i>Adjudicator</i>
Address for electronic communications	To be confirmed by the <i>Adjudicator</i>

X5: Sectional Completion

If Option X5 is used	The <i>completion date</i> for each section of the works is
<i>section</i>	<i>description</i>
	<i>completion date</i>

(1)		
(2)		
(3)		
(4)		

X6: Bonus for early Completion

If Option X6 is used without Option X5

The bonus for the whole of the *works* is

per day

If Option X6 is used with Option X5

The bonus for each *section* of the *works* is

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

The bonus for the remainder of the *works* is

X7: Delay Damages

If Option X7 is used without Option X5

Delay damages for Completion of the whole of the *works* are

per day

Delay damages for each *section* of the *works* are

If Option X7 is used with Option X5

<i>section</i>	<i>description</i>	<i>amount per day</i>
----------------	--------------------	-----------------------

(1)		
(2)		
(3)		
(4)		

The *delay damages* for the remainder of the *works* are

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

£5,000,000.00

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

12 years

X13: Performance bond

If Option X13 is used

The amount of the performance bond is

X15: The *Contractor's* design

If Option X15 is used

The *period for retention* following Completion of the whole of the *works* or earlier termination is

12 years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim

£5,000,000.00

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

12 years

X16: Retention

If Option X16 is used

The *retention free* amount is

The *retention percentage* is

Retention bond

The *Contractor* **may not** give the *Client* a retention bond

X17: Low performance damages

If Option X17 is used

The amounts for low performance damages are

amount

performance level

	for	
	for	
	for	
	for	

X18: Limitation of liability

If Option X18 is used

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

The *Contractor's* liability for Defects due to its design which are not listed on the Defects Certificate is limited to

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to

The *end of liability date* is

years after the Completion of the whole of the *works*

X20: Key Performance Indicators

If Option X20 is used

The *incentive schedule* for Key Performance Indicators is in

A report of performance against each Key Performance Indicators is provided at intervals of

months

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

The period for payment is

23

 days after the date on which the payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used	term	beneficiary

Z: Additional conditions of contract

The *additional conditions of contract* are

As set out in Section 4.

SECTION 3

CONTRACT DATA PART TWO

PART TWO – DATA PROVIDED BY THE CONTRACTOR

1 General

The Contractor is

Name

Address for communications

Address for electronic communications

The fee percentage is

As set out in the Framework Contract Pricing Schedule

The working areas are

The key persons are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register

2 The Contractor’s main responsibilities

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

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

3 Time

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

If the *Contractor* is to decide the *completion date* for the whole of the *works*

The *completion date* for the whole of the *works* is

5 Payment

The *activity schedule* is

The tendered total of the Prices is

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

Data for the Short Schedule of Cost Components

The *people rates* are

as set out in the Framework Contract Pricing Schedule

The published list of Equipment is the edition current at the Contract Date of the list published by

RICS (Schedule of Basic Plant Charges)

The percentage for adjustment for Equipment in the published list is

as set out in the Framework Contract Pricing Schedule

The rates for other Equipment are

Equipment	rate

The rate for Defined Cost of design outside the Working Areas are

category of person	rate

The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

SECTION 4

ADDITIONAL CONDITIONS OF CONTRACT

ADDITIONAL CONDITIONS OF CONTRACT

SPECIAL CONDITIONS

PART 1: AMENDMENTS TO CORE CLAUSES

NEC4 ENGINEERING AND CONSTRUCTION CONTRACT, JUNE 2017 EDITION

Clause

Contract Agreement

11.2(3A) Add as clause 11.2(3A):

Contract Agreement means the attached agreement executed by the Parties.

Contract Date

11.2(4) Delete clause 11.2(4) and substitute:

The **Contract Date** is the date of the Contract Agreement.

Contractor Default Termination

11.2(4A) Add as clause 11.2(4A):

Contractor Default Termination occurs when the *Project Manager* issues a termination certificate on the *Client's* application for any of reasons R1-R15, R18 or R22.

Corrupt Act

11.2(5) Delete and substitute:

A **Corrupt Act** is a breach of clause A11 of the Additional Conditions.

Defect

11.2(6) Delete and substitute:

A **Defect** is a part of the *works*

- which is not in accordance with the Scope or any other requirement of the contract to be complied with by the *Contractor* or

- which is not in accordance with applicable law or
- designed or specified or selected by the *Contractor*, if the design or specification or selection:
 - infringes any requirement of the contract to be complied with by the *Contractor* or
 - has not been carried out using the skill and care normally to be expected of a suitably qualified and experienced professional designer.

Defects Certificate Due Date

11.2(7A) Add as clause 11.2(7A):

Defects Certificate Due Date is defined in clause 44.3.

Defined Cost

11.2(7B) Add as clause 11.2(7B):

Defined Cost includes, in addition to the cost of the components in the Schedule (or Short Schedule) of Cost Components, the other amounts in clause 52.1, except the Fee.

Force Majeure Event

11.2(10A) Add as clause 11.2(10A):

Force Majeure Event means an event which neither Party is able to prevent, caused by the forces of nature or by other circumstances not confined in their causes or effects wholly or mainly to the Parties, to any Subcontractor or supplier (or sub-subcontractor or sub-supplier of any tier), to any Plant or Materials, to the Site or to the *works*, which event is not weather conditions, a *weather measurement* or other event against which either Party is required to insure, the happening of which

- stops the *Contractor* from completing the whole of the *works* or
- stops the *Contractor* from completing the whole of the *works* by the Completion Date,

and which an experienced contractor would have judged at the Contract Date to have had such a small chance of happening that it would have been unreasonable to have allowed for it.

To Provide the Works

11.2(15) In line 2, after "contract" add:

and applicable law

Special Conditions

11.2(18A) Add as clause 11.2(18A):

Special Conditions means the special conditions annexed, consisting of Part 1: Amendments to core clauses, Part 2: Amendments to option clauses and Part 3: Additional Conditions.

11.2(20A) **Working Day**

Add as clause 11.2(20A):

Working Day means any day other than Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales.

Interpretation

References to legislation

12.4A Add as clause 12.4A:

Any reference in the contract to any legislation means such legislation as amended, supplemented or re-enacted for the time being and from time to time, and where relevant, includes any subordinate legislation or code of practice made or approved under such legislation.

Meaning of 'defects date'

12.4B Add as clause 12.4B:

References to the *defects date* mean the date which the 1st day after the end of the relevant period specified at item 4 of the Contract Data Part 1 (*Quality management*), which period commences the day following Completion of the whole of the *works*.

Payment notices

13.2A Add as clause 13.2A:

13.2A.1 Any notice:

- (a) if be given for the purposes of clause 5 (*Payment*) or clause Y2.3 (*Notice of intention to pay less*) may be:

- (i) delivered by hand; or
- (ii) sent by e-mail and on the same day, sent by pre-paid first class post,

to the relevant Party in accordance with the applicable details in the Contract Data or such other details as that Party notifies to the Party giving notice from time to time.

13.2A.2 Any notice delivered or sent in accordance with clause 13.2A.1 takes effect as being given and served:

- (a) if delivered by hand:
 - (i) by 4.00 pm on a Working Day, on the day of delivery; but otherwise
 - (ii) on the first Working Day after it is delivered,
- (b) if sent by post, on the first Working Day after it is sent.

Client's approvals

13.9 Add as clause 13.9:

Any agreement of or other communication by the *Client* under the conditions is effective only if given in writing. The *Client* need not use any specified communication system to make any communication.

Contractor's proposals

16.3 After line 2, add:

- not at the *Client's* disposal

Ambiguities and inconsistencies

17.1 Delete the second sentence of clause 17.1.

17.1A Add as clause 17.1A:

17.1A.1 In the case of any inconsistency between documents each prevails over or is subordinate to the other(s) in descending order as follows:

- the Special Conditions

- the *conditions of contract* other than the Special Conditions
- the Contract Data Part 1
- the Scope provided by the *Client*
- the Contract Data Part 2
- any Scope provided by the *Contractor*
- any other contract documents.

17.1A.2 The resolution of an inconsistency in accordance with clause 17.1A.1 is not a compensation event.

17.1A.3 The *Project Manager* may issue an instruction to resolve any such ambiguity or inconsistency other than in accordance with clause 17.1A.1, and such instruction is a compensation event only if the ambiguity or inconsistency is in a contract document provided by the *Client* or is between contract documents provided by the *Client*.

Corrupt Acts

18 Delete.

Force Majeure Events

19.1 Delete and substitute:

If the happening of any Force Majeure Event comes to the notice of the *Contractor* or the *Project Manager* that Party notifies the other and the *Project Manager* may give instructions to the *Contractor* as to how the *Contractor* is to respond. The *Project Manager* may first instruct the *Contractor* to submit proposals as to how the *Contractor* should respond and may postpone any instructions until the *Contractor's* proposals are received.

Providing the Works

20.1 Delete and substitute:

The *Contractor* Provides the Works in accordance with the Scope, regularly and diligently and in accordance with and subject to other applicable provisions of the contract.

Plant and Materials

20.1A Add as clause 20.1A:

All Plant and Materials specified or selected by the *Contractor* shall be of good quality, shall be reasonably suitable for their purposes and (unless the Scope provides otherwise) shall be new.

Workmanship

20.1B Add as clause 20.1B:

All workmanship used in the *works* shall be of a good quality and suitable for its purposes.

Prohibited Materials

20.1C Add as clause 20.1C:

Save as required by the Scope the *Contractor* shall not use or permit to be used in the *works* any materials:

- (a) which by their nature or application contravene any British Standard or EU equivalent;
- (b) which contravene the recommendations of the British Council for Offices' publication *Good Practice in the Selection of Construction Materials* 2011; or
- (c) which are considered to be deleterious within the building or engineering design professions.

The *Contractor's* Design

21.1 Delete and substitute:

21.1.1 Save to the extent (if any) otherwise stated in the Scope provided by the *Client*, the *Contractor* designs the whole of the *works*.

21.1.2 The *Contractor* checks any design in the Scope provided by the *Client* and shall be fully responsible for the design of the *works* and shall adopt and take responsibility for any designs which may be carried out or may have been carried out by professional consultants or specialist subcontractors and/or any other person at the request of the *Client* (including, without limitation, any

designs and/or specifications included in the Scope). Without prejudice to the generality of the foregoing, the *Contractor* shall be fully responsible and liable, to the *Client* for all aspects of the design and design development, the selection of goods and materials and the satisfaction of performance specifications.

21.2 In line 3, delete "either" and after "law", add:

or other applicable provisions of the contract, or has not been prepared using the skill and care normally to be expected of a suitably qualified and experienced professional designer

21.2 Add the following paragraph after line 5:

If any design in the Scope provided by the *Client* prevents the *Contractor* from Providing the Works in conformity with the contract, the *Contractor* requests the *Project Manager* to change such design and offers its proposals for such change. The *Project Manager* gives an instruction changing the Scope.

Using the *Contractor's* design

22.1 Delete.

Design of Equipment

23.1 Add as a second bullet point:

- any other applicable provision of the contract,

Working with the *Client* and Others

25.3 Delete the last sentence. After 'met', add:

or by such later date as it is practicable for the *Project Manager* to complete the assessment

25.3A Add as clause 25.3A:

The *Project Manager* assesses and the *Contractor* pays any other cost or loss incurred or to be incurred by the *Client* because of any failure of the work to meet the Condition stated for a Key Date by that date.

Subcontracting

26.1 At the end, add:

The *Contractor* is as responsible for the acts and omissions of Subcontractors as if they were the acts and omissions of the *Contractor*.

26.1A Add as clause 26.1A:

Subcontractors are selected in accordance with the tendering procedures in the Scope. A reason for not accepting a Subcontractor is that it has not been selected in accordance with those procedures.

26.1B Add as clause 26.1B:

Other than as required or permitted by the Scope or the Special Conditions or as approved by the Project Manager, subcontracts are in the form of the NEC4 ECS Engineering and Construction Subcontract, June 2017 edition, incorporating Main Option A. A reason for not accepting the subcontract documents is they are not in the required or permitted form.

Each subcontract is executed as a deed with an end of liability date occurring no earlier than any *end of liability date*.

Within 7 days after the execution of any subcontract the *Contractor* provides a complete copy to the *Project Manager*.

Regulatory requirements

27.4A Add as clause 27.4A:

Subject to any provisions of the Scope, the *Contractor* obtains all approvals, licences and consents required from any public or statutory body, utility undertaker or adjoining owner or occupier and complies with their lawful requirements, for or in connection with Providing the Works.

Assignment

28 Delete and substitute:

28.1 The *Client's* entire rights and benefits under the contract:

- (a) may be assigned by absolute assignment to any person; and
- (b) may be charged and/or assigned by way of security and by way of reassignment on release from or upon the redemption of the security,

and references to the *Client* include its permitted assignees.

28.2 The *Contractor* may not assign or charge the benefit of the contract or any right arising under it without the *Client's* consent,

save that the *Contractor* may assign the right to receive any payment becoming due to it under the contract.

Quality management system

40.2 After "Works", add:

or does not comply with a requirement stated in the Scope

Correcting Defects

44.1 Add at the end:

The *Contractor* corrects Defects at its own cost.

44.2 After "*defect correction period*" add:

or, where applicable, no later than necessary so as not to delay Completion

44.3 Delete and substitute:

The *Supervisor* issues the Defects Certificate on the date (**Defects Certificate Due Date**) which is the later of:

- the *defects date* and
- the end of the last *defects correction period*.

The Defects Certificate is not evidence that the *Contractor* has Provided the Works.

Uncorrected Defects

46.1 Delete everything after "people" in line 3 to the end of the sentence and substitute:

(if the *Client* decides to do so) and the *Contractor* pays this amount. The *Contractor* pays the *Client* the amount of any other cost, loss, liability or damage incurred by the *Client* by reason of the Defect.

Assessing the amount due

50.2 In line 1, after *Project Manager*, add:

on or not more than 5 days

50.2 In the last line, amend "before" to "on or not more than 5 days before".

50.3 After "payment" in line 1, add:

on or not more than 5 days

50.3A Add as clause 50.3A:

Amounts to be paid by or retained from the *Contractor* under clause 50.3 include, without limitation, the reinstatement cost of loss of or damage to the *works*, Plant and Materials, unless caused by any of the *Client's* liabilities in clause 80.1.

50.4 After "payment" in line 1 and after "application" in line 4, add:

on or not more than 5 days

Payment for off-Site Plant and Materials

50.5A Add as clause 50.5A:

The amount due does not include the value of any unfixed Plant and Materials which would otherwise be eligible for inclusion:

- if such Plant and Materials are procured by the *Contractor* or any Subcontractor prematurely, until such time as it would have been reasonable to procure them, having regard to the progress of the *works*;
- unless the *Contractor* has satisfied the *Project Manager* that the *Contractor* is competent to pass title in the Plant and Materials to the *Client* in accordance with clause 70;
- unless they are adequately protected;
- unless they have satisfied any test or inspection required by the Scope or applicable law;
- if outside the Working Areas, unless they are set apart and clearly marked to identify their destination and the interest of the *Client*; and
- unless the *Contractor* has satisfied the *Project Manager* that they are adequately insured in the joint names of the Parties (other than where it is the *Client's* responsibility to procure such insurance).

Payment

51.0 Add as clause 51.0:

The due date for payment of each amount to be assessed under clause 50 is 7 days after the applicable assessment date.

The final date for payment of each such amount is 23 days (or any different period stated in the Contract Data) after the due date.

51.1 After the first sentence, add:

The *Contractor* issues a valid VAT invoice to the *Client* in respect of each payment certified as soon as practicable after each payment is certified.

51.2 Delete the 1st sentence and substitute:

Each certified payment (notified sum) is paid on or before the final date for payment.

Defined Cost

52.1 In line 4, after "recovered", add:

, and contra-charges

Final assessment and payment

53.1 Delete and substitute:

Unless there has been a termination under clause 9 (**Termination**):

- the due date for the amount of the final payment is 42 days after the Defects Certificate Due Date;
- the final date for payment of that amount is 14 days (or any different period stated in the Contract Data) after the due date; and
- the *Contractor* submits an application for the final payment to the *Project Manager* within the 14 day period after the Defects Certificate Due Date, which shows the basis on which the final payment has been calculated.

The *Project Manager* makes an assessment of the final amount due and certifies the final payment no later than 42 days after the Defects Certificate Due Date. The certificate includes details of how the amount due has been calculated.

If there has been a Termination the relevant provisions of clause 9 apply.

53.2 Delete and substitute:

The certified final payment (notified sum) is paid on or before the final date for payment.

53.3 Delete and substitute:

The assessment of the final amount due (as above or under the procedures on termination) issued within the time stated in the contract (**final assessment**) is conclusive evidence of:

- the finally adjusted amount due to the *Contractor* under and in connection with the contract, net of amounts to be paid by the *Contractor* in accordance with clause 50.3; and
- (if stated in the assessment) the total of previous payments made to or by the *Contractor* which are required to be taken into account to ascertain the amount of the final payment,

except that the final assessment has no such evidential effect:

- if the Parties otherwise agree; or
- in proceedings commenced within 6 months after the issue of the final assessment, as to any matter in respect of which in such proceedings are commenced; or
- in subsequent proceedings in the *tribunal*, so far as they are for the re-determination of that matter as decided by an adjudicator,

where **proceedings** means an adjudication or proceedings in the *tribunal*.

53.4 Delete.

Compensation events

60.1(1) After line 3, add:

- under clause 17.2 (illegal or impossible requirement) or

60.1(10) Delete "only" in line 2 and add at the end:

or because a known Defect suggests the likely presence of a similar or related Defect elsewhere in the *works*

60.1 (13) Delete clause.

60.1 (18) Delete and substitute:

A breach of contract by the *Client* which is not one of the other compensation events in the contract and to the extent that such breach was not caused or contributed to by the *Contractor* or Subcontractor

60.1(19) Delete and substitute:

The happening of a Force Majeure Event which is not a compensation event under any other provision of the contract , provided that there shall be no change to the Prices on account of such occurrence unless (and if so, only to the extent that) the *Project Manager* gives instructions under clause 19 changing the Scope.

62.3 In the second sentence delete "two weeks" and substitute:
"three weeks".

62.6 Delete "two weeks" and substitute "three weeks".

Client's liabilities

80.1 In the 3rd bullet point, add before the full stop:

(unless under the contract the *Contractor* takes responsibility for such design)

80.1 Delete the 4th bullet point and substitute:

Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Client*, or by Others on the *Client's* behalf, until they reach the Working Areas and the Contractor has had an opportunity to inspect them.

Insurance

83.3 Delete and substitute:

The insurances in the insurance table (except for death/injury to *Contractor's* employees) are composite or joint, insuring the Parties for their respective interests, and provide cover:

- in the case of the *works*, Plant, Materials and Equipment for all the risks that are normally insurable under a construction 'all-risks' insurance policy;
- in the case of death/injury to the *Contractor's* employees, as required by applicable law; and
- in the case of other property and death/injury to any other person, for all the risks normally insurable under a contractor's public liability policy,

in each case from the *starting date* until the Defects Certificate or a termination certificate is issued.

83.4 Add as clause 83.4:

The Party providing any insurance under this section 8 provides the other Party with a copy of the terms and conditions of the insurance no later than the date of inception of cover and no later than the date on which any change in the terms and conditions takes effect.

84.3 Delete and substitute:

Each Party complies with the terms and conditions of the insurance policies under this section 8 to be complied with on its part, and neither Party by any act or neglect causes any such insurance policy to be void or voidable or entitles the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.

Termination

90.2 In the termination table:

- delete P2 and P4
- delete P3 in the case of termination by the *Client* for reason R17 or R20
- Add A2A as required by clause 93.2 below.

90.3 Delete "If" at the start of the 2nd paragraph and add:

Subject to Option Y(UK)2, where it applies, if

Reasons for termination

91.4 Delete and substitute:

The *Contractor* may terminate if the *Client* fails to comply with the decision of an adjudicator appointed under the contract requiring the *Client* to pay any amount to the *Contractor* (except to the extent that the *tribunal* has granted relief from enforcement of the adjudicator's decision, as long as the *Client* complies with any conditions attaching to such relief) (R16).

91.7 Delete and substitute:

The *Client* may terminate if the *Project Manager* certifies that a Force Majeure Event that is preventing the *Contractor* from or is delaying the *Contractor* in Providing the Works has caused or will cause Completion to be delayed by not less than 13 weeks (R21).

Procedures on termination

92.1 Delete clause 92.1 and substitute:

On termination (P1):

- the *Client* may complete the *works* and may use any Plant and Materials to which it has title or to which it obtains title;
- the *Contractor* removes any other Plant and Materials in the Working Areas which have not been incorporated in the *works*;
- unless the *Client* is entitled to invoke, and does invoke P3, the *Contractor* removes the Equipment;
- the *Contractor* leaves the Working Areas; and
- unless the terminating Party is the *Contractor* and the reason for termination is any of Reasons R1 to R10, the *Project Manager* may instruct the *Contractor* to assign the benefit of any subcontract or relevant supply contract to the *Client*.

92.2 Delete P2 and P4.

Amount due on termination

93.1 & 93.2 Move the 3rd bullet point from clause 93.1 to become A2A in clause 93.2.

Add A2A to the termination table where the *Contractor* terminates for any of reasons R1-R10, R16 and R19.

93.2 Delete A3 and substitute:

A3 a deduction by or payment to the *Client* of the additional cost to the *Client* of Providing the Works other than by the contract and/or the amount of any other cost, loss or liability incurred or to be incurred by the *Client* resulting from the termination, and/or from the reason for termination and/or from any other breach by the *Contractor* of the contract.

Payment on termination

93A Add as clause 93A:

Unless there has been a Contractor Default Termination (in which case clause 94 applies):

- (a) the due date for the final payment is 12 weeks after the date of issue of the termination certificate (**Termination Date**);

- (b) the final date for payment is 21 days after the due date;
- (c) the *Contractor* submits an application to the *Project Manager* for the final payment within 6 weeks after the Termination Date, containing details of how the amount applied for has been calculated;
- (d) the Project Manager makes an assessment of the final payment due and issues a certificate for payment of that amount no later than 5 days after the due date, containing details of how it has been calculated; and
- (e) the certified final payment (notified sum) is paid on or before the final date for payment.

Payment on Contractor Default Termination

94 Add as clause 94:

- 94.1 In the case of Contractor Default Termination the *Project Manager* makes an assessment of the final amount due and certifies a final payment on or before the date (**CDT Assessment Date**) which is 13 weeks after the date when the *Client*:
 - completes the *works* pursuant to clause 92.1; or
 - decides not to complete the *works*.
- 94.2 The certificate specifies the sum the *Project Manager* considers to be due on the payment due date (notified sum) and the basis on which that sum is calculated.
- 94.3 The due date for the notified sum is the CDT Assessment Date and the final date for payment of the notified sum is 28 days after the due date.
- 94.4 The relevant Party pays the notified sum to the other Party on or before the final date for payment.

Interim CDT assessments

95 Add as clause 95:

- 95.1 On the date which is 3 months after the date of termination and every 3 months thereafter (each an **Interim CDT Assessment Date**) until the CDT Assessment Date, if the *Project Manager* is able to quantify an amount below which the final amount due on termination cannot fall, taking account of previous payments and deductions, the *Project Manager* may issue an interim certificate for payment of that amount to or from the *Contractor*.
- 95.2 The due date for payment of the certified amount is the relevant Interim CDT Assessment Date and the final date for payment is 28 days after the due date.
- 95.3 The interim certificate specifies the sum the *Project Manager* considers to be due on the Interim CDT Assessment Date (notified sum) and the basis on which that sum is calculated.
- 95.4 The relevant Party pays the notified sum to the other Party on or before the final date for payment.

PART 2: AMENDMENTS TO OPTION CLAUSES

SECTION 1: MAIN OPTION CLAUSES

Option A

11.2(23A) Add as clause 11.2(23A):

Defined Cost excludes cost which:

- results from a breach of contract by the *Contractor* or any Subcontractor,
- is a *Contractor's* liability under clause 81,
- is incurred in (or in preparing for) the conduct of any disputes resolution procedure,
- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with its contract, or
- was incurred only because the Contractor did not follow an acceptance or procurement procedure stated in the Scope,

and excludes the cost of correcting a Defect.

W2.1 Delete the 2nd sentence.

W2.2 Delete W2.2 and substitute:

Adjudication

The adjudication provisions in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998, SI 1998 No. 649 are incorporated in the contract, subject to the following:

- (a) the adjudicator may determine more than one dispute under or in respect of the contract at the same time and (if requested to do so by the respondent to any reference) determines any matter in the nature of set-off, abatement or counterclaim when determining any other dispute referred;
- (b) if the *Contractor*, the Subcontractor and the adjudicator agree, the adjudicator may determine any dispute between the *Contractor* and any Subcontractor that raises substantially the same issues

as the dispute referred under the contract, at the same time as determining that latter dispute;

- (c) when giving the decision determining the matter(s) referred, the adjudicator gives written reasons;
- (d) neither Party invokes the jurisdiction of the *tribunal* to finally determine a dispute that is referred to adjudication after the date which is 90 days after the date of issue of the adjudicator's decision;
- (e) if neither Party does so before that 90 day period has ended, the adjudicator's decision is conclusive between the Parties;
- (f) for the purposes of the adjudication and of any such *tribunal* proceedings begun after the date of referral of the dispute to adjudication, the referral to adjudication stops the running of time under the Limitation Act 1980 (or its equivalent under applicable law) in respect of the dispute;
- (g) the burden of proof in the *tribunal* is unaltered by an adjudicator's decision; and
- (h) the time limit in (d) does not run from the date of issue of an adjudicator's decision that is declared by the *tribunal* or agreed by the Parties to be invalid; upon such declaration or agreement, the running of time under the Limitation Act 1980 (or equivalent law) resumes.

W2.3 Delete W2.3.

Final tribunal

W2.4 Delete and substitute

Subject to clause 53.3 and the above provisions for adjudication, the *tribunal* has exclusive jurisdiction in respect of all matters arising under or in connection with the contract.

SECTION 3: SECONDARY OPTION CLAUSES

X11 Option X11: Termination by the *Client*

X11.2 Delete and substitute:

On termination under Option X11 the termination procedure is P1 and the amounts due on termination are A1, A2, A2A, and A4.

X15 Option X15: Limit to design liability

X15.1 Delete clause X15 and substitute:

The *Contractor* is not liable for any Defects which arise from the *Contractor's* design (including the preparation of any specifications for any work or Plant or Materials and checking of any design in the Scope provided by the *Client*), so far as the *Contractor* demonstrates that in the preparation or checking of such design it used the reasonable skill and care to be expected of suitably qualified designers experienced in the design of works similar in scale and character to the *works* or the relevant part of the *works*.

X16 Option X16: Retention

X16.4 Add as clause X16.4:

The *Client* is under no fiduciary obligation in respect of the amount retained and is under no obligation to place an amount equivalent to the amount retained in any bank account.

X18 Option X18: Limitation of liability

X18.3 Add:

Such limit does not apply to:

- loss of or damage to the *works*, Plant or Materials occurring before Completion; or
- any other loss or damage caused by an insured risk in respect of which the *Contractor* is required to insure, up to the limit of indemnity specified for such insurance, in which event the *Contractor's* limit of liability shall be equal to the greater of such limit of indemnity and the relevant amount stated in the Contract Data, any one event.

X18.5 In line 5, delete "as stated in the contract". Add the following bullet points:

- any cost or liability against which the *Contractor* is required to insure, up to the specified limit of indemnity for such loss or liability;
- the cost of correcting Defects
- personal injury or death,
- interest on any debt or damages,
- costs in any proceedings.

X18.6 Delete.

Option Y(UK)2: HGCRA 1996

Definitions

Y2.1 Delete and substitute:

In this Option:

- Time periods in clauses 50.1 – 53.2 and 93A - 95 and in this Option include Working Days only; and
- **Insolvent** means insolvent within the definition in s.113 of the Housing Grants, Construction and Regeneration Act 1996.

Dates for payment

Y2.2 Delete.

Notice of intention to pay less

Y2.3 Delete and substitute:

If a Party (**Paying Party**) intends to pay less than any notified sum, it gives the other Party notice of such intention (**Pay Less Notice**) no later than 7 days before the final date for payment, stating:

- (a) the sum that it considers to be due on the date such notice is given; and
- (b) the basis on which that sum is calculated,

It being immaterial that the sum the Paying Party intends to pay is zero.

In that event the amount the Paying Party pays in respect of the relevant certificate, on or before the final date for payment, is the amount

specified as due in the Pay Less Notice, but this does not affect the right of the other Party to contest any statement in the Pay Less Notice.

Y2.3A Add as clause Y2.3A:

If a Pay Less Notice is served in accordance with clause Y2.3 in relation to the final amount under clause 53, the final assessment has effect under clause 53.3 as qualified by the Pay Less Notice.

Y2.4 In the bullet points, change "the contract" to "clause Y2.3" and in the 2nd bullet point, change "for one of reasons R1 to R10" to

for the reason that the *Contractor* is Insolvent.

PART 3 - ADDITIONAL CONDITIONS

A1 Professional indemnity insurance

- A1.1 The *Contractor* warrants to the *Client* and any Beneficiary that there is in force a policy of professional indemnity insurance covering its liabilities under the contract for negligent design and specification, with a limit of indemnity of not less than that stated in the Contract Data for any claim or claims arising out of each originating cause (or, in the case of claims for pollution or contamination, with not less than such limit of indemnity in the aggregate for any and all claims notified in any one year of insurance). The *Contractor* maintains such insurance at all times until 12 years after Completion (or if sooner until 12 years after the termination of its employment under the contract), provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms obtainable.
- A1.2 If for any period such insurance is not available on commercially reasonable terms, the *Contractor* forthwith informs the *Client* and any Beneficiary and obtains in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the *Contractor* to obtain.
- A1.3 Whenever reasonably required to do so by the *Client* or any Beneficiary the *Contractor* provides documentary evidence that the insurance required under this clause A1 is being maintained.

A2 Contractor's warranty

- A2.1 The *Contractor* whenever required to do so by the *Client* promptly executes and delivers a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant in the terms of the draft *Contractor's* warranty contained in Appendix B9.
- A2.2 If the *Contractor* fails to execute and deliver any such deed pursuant to clause A2.1 above, within 7 days of the *Client's* request, the *Client* may execute such deed on the *Contractor's* behalf, and the *Contractor* hereby appoints the *Client* as the *Contractor's* attorney for the purpose of executing any such deed and the *Contractor* ratifies and confirms any act done by the *Client* pursuant to this power of attorney and agrees that

this power is irrevocable pursuant to section 4 of Powers of Attorney Act, 1971.

A3 Consultants

[Version A - applicable if the consultants are to be appointed by the Contractor]

A3.1 Within 21 days after the Contract Date the *Contractor* appoints the following consultants (or such other consultants as the *Client* approves) for the purposes of the *works*:

[Architects	◆
Civil [& structural] engineers:	◆
[Others]	◆]

A3.2 The consultants are appointed by deed in the terms of the respective draft appointments in Appendix B8, or in the terms of the NEC4 PSC with such modifications (if any) as the *Contractor* or any consultant proposes and the *Client* approves.

A3.3 Within 7 days after the appointment of each consultant the *Contractor* supplies to the *Client* a Certified Copy of the consultant's deed of appointment.

A3.4 The *Contractor* ensures that each consultant forthwith upon its appointment executes and delivers a deed of warranty in favour of the *Client* in the form of the draft deed in Appendix B10, mutatis mutandis, with such modifications (if any) as the *Contractor* or consultant proposes and the *Client* approves. If required, the *Contractor* itself executes and delivers such deed of warranty forthwith upon the *Client's* request.

A3.5 Whenever the *Client* from time to time requests, the *Contractor* ensures that within 14 days after any such request, each consultant executes and delivers a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant in the form of the draft in Appendix B10, mutatis mutandis, with such modifications (if any) as the *Contractor* or consultant proposes and the *Client* approves. If required, the *Contractor* itself executes and deliver such deed of warranty forthwith upon the *Client's* request.

A3.6 The *Contractor* does not dismiss any of the consultants or vary the terms of its appointment without the approval of the *Client*.

- A3.7 If the employment of any consultant is terminated before the completion of its services the *Contractor* as soon as is practicable but on 7 days' notice to the *Client* appoints another consultant to complete those services (save any consultant to whom the *Client* makes reasonable objection). The foregoing provisions of this clause A3 apply to such replacement consultant, mutatis mutandis.
- A3.8 If the *Contractor* breaches any provision of this clause A3, the *Client* may give the *Contractor* written notice specifying the breach. If such breach is not rectified by the *Contractor* within 14 days after service of such notice, no further payment is due to the *Contractor* under the contract while the breach remains to be rectified.]

[Version B - applicable if the consultants are to be appointed by the Client and novated to the Contractor]

- [A3.1 Within 21 days after the Contract Date the *Client* (unless it has already done so) appoints by deed for the purposes of the *works* the following consultants, on terms substantially of the respective draft appointments in Appendix B8, or in the terms of the NEC4 PSC and within such 21 day period the *Client* and the *Contractor* enter into deeds of novation (and the *Client* procures that the consultants enter into such respective deeds of novation) novating such appointments from the *Client* to the *Contractor*:

[Architects	◆
Civil [& structural] engineers:	◆
Others	◆]

- A3.2 Such deeds of novation are set out in Appendix B12.
- A3.3 Within 7 days after the novation of the appointment of each consultant, the *Client* provides to the *Contractor* a Certified Copy of the consultant's deed of appointment and of the relevant deed of novation.
- A3.4 The *Contractor* ensures that each consultant forthwith upon the completion of the relevant deed of novation executes and delivers a deed of warranty in favour of the *Client* in the form of the draft deed contained in Appendix B10, mutatis mutandis. If necessary, the *Contractor* itself executes and delivers such deed of warranty forthwith upon the *Client's* request.
- A3.5 Whenever the *Client* from time to time requires, the *Contractor* ensures that within 14 days after any such request each consultant executes and

delivers a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant in the form of the draft in Appendix B10, mutatis mutandis. If necessary, the *Contractor* itself executes and delivers such deed of warranty forthwith upon the *Client's* request.

A3.6 The *Contractor* does not dismiss any of the consultants or vary the terms of its appointment without the written approval of the *Client*.

A3.7 If the employment of any consultant is terminated before the completion of its services the *Contractor* as soon as is practicable but on 7 days' notice to the *Client* appoints another consultant to complete those services (save any consultant to whom the *Client* makes reasonable objection). The terms of engagement of such replacement consultant are substantially the same as the relevant draft appointment in B8, or in the terms of the NEC4 PSC, mutatis mutandis, with such further modifications (if any) as the *Contractor* or consultant proposes and the *Client* approves. The provisions of clauses A3.3 – A3.6 inclusive and this clause A3.7 apply to any such replacement consultants, mutatis mutandis.

A3.8 If the *Contractor* breaches any provision of this clause A3, the *Client* may give the *Contractor* written notice specifying the breach. If such breach is not rectified by the *Contractor* with 14 days after service of such notice, no further payment is due to the *Contractor* under the contract while such breach remains to be rectified.]

A4 Specified Subcontractors

A4.1 In this clause A4 **Specified Subcontractor** means any Subcontractor or supplier of the *Contractor* for the following elements of the *works*:



A4.2 Each of the Specified Subcontractors is appointed by deed, and within 7 days after the appointment of a Specified Subcontractor the *Contractor* supplies a Certified Copy of the sub-contract to the *Client*.

A4.3 The *Contractor* ensures that each Specified Subcontractor forthwith upon its appointment executes and delivers a deed of warranty in favour of the *Client* in the form of the draft in Appendix B11, mutatis mutandis, with such modifications (if any) as the *Contractor* or Subcontractor proposes and the *Client* approves.

A4.4 Whenever the *Client* from time to time requires, the *Contractor* ensures that within 14 days after any such request each Specified Subcontractor executes and delivers a deed or deeds of warranty in favour of any Mortgagee and/or Purchaser and/or Tenant in the form of the draft in Appendix B11, mutatis mutandis, with such modifications (if any) as the *Contractor* or Subcontractor proposes and the *Client* approves.

A4.5 If the *Contractor* breaches clause A4.2 or clause A4.3 or clause A4.4 the *Client* may give the *Contractor* written notice specifying the breach. If the breach is not rectified by the *Contractor* within 14 days after service of such notice the *Client* is not liable to pay any amount in respect of the elements of the *works* to which the default relates while such breach remains to be rectified.

A5 [NOT USED / Performance bond]

A5.1 On the Contract Date the *Contractor* provides to the *Client* a performance bond in the amount specified in the Contract Data under Option X13 in terms of the draft in Appendix B14 (or such other terms as the *Client* shall have approved) executed as a deed and delivered by a bank or insurance company previously approved by the *Client*.

A5.2 Unless a performance bond is provided in terms of clause A5.1 the *Client* is entitled to retain out of amounts becoming due to the *Contractor* a sum equal to the required amount of the performance bond. Any amount so retained becomes due for release to the *Contractor* only when such performance bond is provided, or, if none is provided, on the date on which a bond in terms of the draft contained in Appendix B14 would have lapsed.]

A6 [NOT USED / Parent company guarantee]

A6.1 On the Contract Date the *Contractor* provides to the *Client* a parent company guarantee in terms of the draft contained in Appendix B13 (or such other terms as the *Client* shall have approved) executed as a deed and delivered by ²◆ (**Parent Company**).

A6.3 No payment is due to the *Contractor* under the contract while the *Contractor* remains in default of this clause A6.]

² The name of the parent company providing guarantee should be inserted here.

A7 CDM Regulations

- A7.1 In this clause A7 **CDM Regulations** means the Construction (Design and Management) Regulations 2015.
- A7.2 The *Client* appoints the *Contractor* to be the principal contractor [and principal designer] for the purposes of the *works*.
- A7.3 Each Party undertakes to the other that it has complied and will comply with its statutory duties under the CDM Regulations in relation to the *works*.
- A7.4 [Before Completion the *Contractor* provides the principal designer with such information as the principal designer needs the *Contractor* to provide for inclusion in the health and safety file. / Before Completion the *Contractor* provides to the *Client* two paper copies and two electronic copies of the health and safety file for the *works* conforming to the requirements of the CDM Regulations.]

A8 Documents

- A8.1 The *Contractor* grants the *Client* and any Beneficiary an irrevocable, non-exclusive, royalty-free licence to use and reproduce any of the drawings, details, specifications and calculations which have been or are prepared by or on behalf of the *Contractor* relating to the *works* and the designs contained in them (**Documents**) for any purpose connected with the *works* (other than by the reproduction of such designs in any extension to the *works*) and grants to the *Client* and any Beneficiary a licence to grant sub-licences in the terms of this licence but copyright in the Documents shall remain vested in the *Contractor*.
- A8.2 The *Contractor* is not liable for any use of the Documents for any purposes other than those for which they are or were prepared. The *Contractor* supplies the *Client* and any Beneficiary with copies of the Documents on request (in the case of a Beneficiary on payment of a reasonable charge for reproduction costs).
- A8.3 The *Contractor* warrants to the *Client* and any Beneficiary that the use of the Documents for the purposes of *works* will not infringe the rights of any third person.

A9 Site conditions

The *Client* gives no warranty or representation as to the condition of the Site or any adjoining property or any services in or under the Site or as to the accuracy or sufficiency of any soils or survey data or other data contained in the Scope or otherwise made available to the *Contractor* by or on behalf of the *Client*, or as to any recommendations or conclusions made or reached in any such document.

A10 Confidentiality

A10.1 Save with the *Client's* prior approval or as is necessary to enable the *Contractor* to Provide the Works, the *Contractor* treats all information relating to the contract and the *works* as confidential.

A10.2 The *Contractor* does not without the prior written approval of the *Client* use or authorise the use of any photograph or drawing or other depiction of the *works* or any part of the *works* for publicity purposes or in any annual report or accounts or otherwise for any purpose other than to Provide the Works.

A10.3 The *Contractor* ensures that all its subcontracts contain the provisions in clause A10.1 and A10.2 (*mutatis mutandis*) and takes all steps necessary to ensure that such provisions are enforced.

A11 Corrupt Acts

A11.1 The *Contractor* warrants that no offence under the Bribery Act 2010 (**Act**) has been or will be committed by:

- (a) the *Contractor*; or
- (b) any associated person of the *Contractor*,

in connection with the procurement or performance of the contract or any associated transaction.

A11.2 For the purposes of clause A11.1 (b), the definition of **associated person** in s.8 of the Act applies (and includes any Subcontractor and any supplier to the *Contractor* of any Plant or Materials or Equipment).

A11.3 If at any time the *Contractor* has knowledge of or has reasonable grounds to suspect the occurrence of a breach of the warranty in clause A11.1, the *Contractor* promptly notifies the *Client* in writing of such

matters within its knowledge, or of such grounds for suspicion, and co-operates with the *Client* in the investigation of such breach or suspected breach of warranty.

A11.4 The *Contractor* includes equivalent provisions to clauses A11.1 – A11.3 in each of its contracts with associated persons and takes all steps necessary to ensure that they are enforced.

A11.5 This clause A11 survives the termination (for any reason) of the contract.

A12 Approvals

A12.1 No inspection, testing, approval or review by or on behalf of the *Client* or any Beneficiary and no omission to inspect, test, approve or review diminishes any duty or liability of the *Contractor* under the contract.

A12.2 Whenever in these Special Conditions there is a reference to any approval by the *Client*, such approval is not withheld or delayed without reasonable cause.

A28 Additional definitions

In the contract:

- (a) **Certified Copy** means a paper copy certified by a solicitor as a true and complete copy;
- (b) **Commercially Sensitive Information** means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:
 - (i) which is provided by the *Contractor* to the *Client* in confidence for the period set out in that Schedule; and/or
 - (ii) that constitutes a trade secret;
- (c) **Development** means the Site and/or the *works*, in whole or in part;
- (d) **Mortgagee** means a person having or acquiring any mortgage or charge over the Development;

- (e) **Purchaser** means a person having or acquiring a freehold interest in the Development, or a purchaser for a capital consideration of a leasehold interest;
- (f) **Tenant** means a person having or acquiring a leasehold interest in the Development, other than a Purchaser.