

A90/A96 HAUDAGAIN IMPROVEMENT

VOLUME 2 OF 6

CONDITIONS OF CONTRACT

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A90/A96 HAUDAGAIN IMPROVEMENT
CONTRACT NUMBER TS/MTRIPS/WKS/2017/04

CONTRACT WORKING ISSUE

VOLUME 2 OF 6

CONDITIONS OF CONTRACT

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TRANSPORT SCOTLAND

A90/A96 HAUDAGAIN IMPROVEMENT

TS/MTRIPS/WKS/2017/04

CONTRACT WORKING ISSUE

VOLUME 2 OF 6

CONDITIONS OF CONTRACT

DOCUMENT ISSUE RECORD

I hereby confirm that this is the current version of the Conditions of Contract and supersedes all previous issues of such document by the Employer.

Signed _____
Name (Block capitals) _____
Date _____
Contractor _____

Copy of signed page shall be sent to, Transport Scotland, [REDACTED].

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2.1 CONDITIONS OF CONTRACT

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DEFINITIONS AND INTERPRETATION

- 1 (1) In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires: **Definitions**

“Additional Party Agreement” means the agreement to be signed by Named Subcontractors, the Employer and the Contractor to enable Named Subcontractors to be joined as parties to the Project Bank Account Trust Agreement;

“Advice Note SA10/05” means Advice Note SA10/05 of the Manual of Contract Documents for Highway Work Vol.6, Section 2, Part 2 for the purposes of New Roads and Street Works Act 1991 and the Code of Practice thereunder;

“Apparatus” shall have the same meaning as apparatus under Part IV of the New Roads and Street Works Act 1991 and includes all services, supplies, equipment and plant insofar as controlled, managed, operated or owned by an Undertaker;

“Appropriate Assessment” means the assessment of a proposal which may have a significant effect upon a Natura 2000 site as required under the Conservation (Natural Habitats, etc) Regulations 1994 which shall be undertaken to ascertain if the integrity of the Site shall be adversely affected;

“Approval” means confirmation for the purposes of the Contract and shall not be held to relieve the Contractor of any of his responsibilities under the Contract;

“Arbitrator” means an individual appointed under Clause 66(4) as an arbitrator;

“Auditor” has the meaning ascribed in Clause 18(12);

“Authorisation (online)” means an authorisation made through the Project Bank Account Online Banking by the Contractor or the Employer authorising the Project Bank to make payments to the Contractor and the Named Subcontractors from the Project Bank Account;

“Authorisation (written)” means the document to be signed by the Employer and the Contractor authorising the Project Bank to make payments to the Contractor and the Named Subcontractors from the Project Bank Account;

“Bond and Undertaking” means the bond and undertaking that may be provided by the Contractor to the Employer pursuant to Clause 10;

“Business Day” means any day other than a Saturday, Sunday or Scottish Bank Holiday;

“Certificate of Completion” has the meaning given to it in Clause 48;

"Checker" means the firm(s) or organisation(s) or person(s) of appropriate skill employed by the Contractor or the Designer (technically independent of the Designer) and acceptable to the Employer to undertake the independent design check of the Design. Prior to any employment by the Designer of the Checker, the Contractor shall carry out sufficient verification of the agreement/contract between the Designer and Checker to satisfy himself that no part of such agreement/contract impacts on the technical independence of the Checker. Any such verification shall be recorded in writing as part of the Contractor's Quality System. No such contract/agreement shall permit the Designer to impact on the technical independence of the Checker;

"Communications Implementation Plan" means the document to be supplied by the Contractor to the Employer setting out how he will fulfil the communications requirements for the Works.

"Conceptual Design" means the drawings, specifications and other documents forming part of the Contractor's Submission;

"Conceptual Design Element" means a part of the Conceptual Design identified in Appendix F to Form of Final Tender;

"Conditions of Contract" means these Conditions of Contract set out in Clauses 1 to 89 together with Annex 1, Annex 2, Annex 3, Annex 4 and Annex 5 attached to these Conditions of Contract;

"Contract" means the Form of Tender, Conditions of Contract, the Employer's Requirements including the Specification, the drawings referred to in the Specification, the Contractor's Submission and the Letter of Acceptance;

"Contract Date" means the date of issue of the Letter of Acceptance;

"Contract Price" means the sum to be ascertained and paid in accordance with the provisions hereinafter contained for the Design, construction completion and maintenance of the Works in accordance with the Contract;

"Contractor" means the person or persons, firm or company whose Final Tender has been accepted by the Employer and includes the Contractor's personal representatives successors and permitted assignees;

"Contractor's Hold Point" means a point incorporated in the Quality System or a point notified by the Engineer at any time to the Contractor for incorporation in the Quality System, beyond which point work will not proceed until all work up to that point has been demonstrated under the Contractor's Quality System as complying with the requirements of the Contract;

"Contractor's Programme" has the meaning given to it in Clause 14;

"Contractor's Submission" means the Final Tender and the agreed documents from the Contractor's offer as described in the Letter of Acceptance;

"Contractor's Witness Point" means a point incorporated in the Quality System at which point the Contractor shall allow time and give facilities for the Contractor's nominated representative appointed for that purpose to witness the process at that point;

"Constructional Plant" means all appliances or things of whatsoever nature required in or about the construction completion and maintenance of the Works but does not include materials or other things intended to form or forming part of the Permanent Works;

"Data Processing Agreement" means the data processing agreement to be entered into between the Employer and Contractor in the form set out in Annex 3 to the Conditions of Contract which sets out the terms on which personal data will be processed by the Contractor as is required for the Contract;

"Date for Commencement of the Works" means the Contract Date;

"Deemed Variation" shall have the meaning given to it in Clause 51;

"Design" means all work necessary for the preparation, verification and completion of the Drawings from which the Permanent Works are to be constructed and includes carrying out all procedures and checks and the obtaining of all Approvals and provision of all certificates required by the Contract;

"Design Element" means a part of the Design which is identified by reference to the equivalent part of the Conceptual Design identified in Appendix F to Form of Final Tender;

"Designer" means the firm(s) or organisation(s) or person(s) of appropriate skill employed by the Contractor and acceptable to the Employer to undertake the Design;

"Disputes Resolution Procedure" means the procedure identified in Clause 66;

"Drawings" mean:

- (i) the drawings referred to in the Specification; and
- (ii) the drawings prepared in the Design by the Contractor; and
- (iii) such other drawings as may from time to time be furnished by the Engineer or the Contractor;

"Employer" means The Scottish Ministers, Transport Scotland, [REDACTED] and includes the Employer's personal representatives or successors;

"Employer's Requirements" means the description of the relevant standards, technical memoranda, and other requirements identified by the Employer in the Letter of Acceptance;

"Engineer" means [REDACTED], or such other Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purposes of the Contract in place of the said Engineer;

"Engineer's Hold Point" means a point notified by the Engineer at any time to the Contractor for incorporation in the Quality System beyond which point the Contractor is not permitted to proceed without demonstrating under his Quality System to the Engineer's satisfaction that he has complied with the Contract requirements up to that point;

"Engineer's Representative" means a person being the resident engineer or assistant of the Engineer appointed from time to time by the Employer or the Engineer and notified in writing to the Contractor by the Engineer to perform the functions set forth in Clause 2(1);

"Engineer's Witness Point" means a point incorporated in the Quality System at which point the Contractor shall give due notice to the Engineer and allow time and give facilities for the Engineer to witness the process at that point;

"Environmental Assessment Documents" means any document identified in Appendix Q to the Employer's Requirements including the:

- (i) Environmental Statement(s);
- (ii) Environmental Assessment(s); and
- (iii) Appropriate Assessment(s).

Exceptionally Adverse Weather means weather conditions affecting the Site (or any part it) that directly impacts on the ability of the Contractor to carry out the Works, and the recording of which, in comparison to relevant and reputable historic weather data agreed by the Parties (both acting reasonably), is shown to occur at the nearest appropriate Met Office weather station, as agreed with the Engineer, on average less frequently than once in 20 years;

"Final Tender" means the Form of Final Tender completed by the Contractor including all supporting documentation and which forms part of the Contractor's Submission;

"Final Tender Total" means the lump sum inserted by the Tenderer in the Form of Final Tender;

"Form of Final Tender" means the Form of Tender;

"Form of Tender" means the set of tender documents and information described in the Letter of Acceptance and which were issued or made available to the Contractor by or on behalf of the Employer prior to the Contract Date;

“Good Industry Practice” means using standards, practices, methods and procedures conforming to law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a large, reputable, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to those comprised in the Design, construction, completion and maintenance of the Works (as the case may be), and seeking in good faith to comply with its contractual obligations and all duties owed by it;

“Grouting Works” means the grouting and drilling works necessary in relation to abandoned mineworkings and sub-surface voids that are within the zone of influence of the Permanent Works to ensure that any such mineworkings or sub-surface voids shall be fully treated. The Contractor shall carry out all such Grouting Works as part of the Design, construction, completion and maintenance of the Works. The Contractor shall carry out at his own cost any other consequential Design and Works resulting from such Grouting Works necessary to construct, complete and maintain the Works;

“Indicative Schedule of Undertakers’ Works” means the indicative schedule of undertakers’ works identified in Appendix 1/16 of the Specification;

“Land Made Available by the Employer for the Works” means the land made available by the Employer for the Works shown on the drawings listed in Appendix 0/4 of the Specification under the title “Land Made Available by the Employer for the Works”;

“Lane” means any delineated running lane or any hard shoulder of any road identified in Appendix E to Form of Final Tender and which is capable of carrying all permitted classes of vehicles except where it is preceded by “Narrow” in which case such a Lane is capable of only carrying light vehicles as defined in Chapter 8 of the Traffic Signs Manual;

“Lane Occupation” means each occupation of the whole or part of a Lane by the Contractor which as a result of the Contractor’s operations results in the whole or any part of the said Lane becoming unavailable for use by all permitted classes of vehicles, or in the case of a “Narrow Lane” the whole or part of the “Narrow Lane” becoming unavailable for use by light vehicles as defined in Chapter 8 of the Traffic Signs Manual;

“Lane Occupation Period” means:

- (i) A Weekday Day Time Lane Occupation which is a Lane Occupation within the Site at any time between 00:00 hours and 23:59 hours of the same day from Monday to Friday provided that the Lane Occupation commences on or before 20:00 hours of the said day;
- (ii) A Weekday Night Time Lane Occupation which is a Lane Occupation within the Site which commences after 20:00

hours of one day from Monday to Thursday and which ends at any time before 06:00 hours of the following day;

- (iii) A Weekend Day Time Lane Occupation which is a Lane Occupation within the Site at any time between 00:00 hours and 23:59 hours of the same day from Saturday to Sunday provided that the Lane Occupation commences on or before 20:00 hours of the said day;
- (iv) A Weekend Night Time Lane Occupation which is a Lane Occupation within the Site which commences after 20:00 hours of one day from Friday to Sunday and which ends at any time before 06:00 hours of the following day;

“Legislation” means

- (i) any Act of Parliament, including any local, personal or private Act of Parliament, any subordinate legislation (as that expression is defined in section 21(1) of the Interpretation Act 1978), any exercise of the Royal Prerogative and any enforceable community right (as that expression is defined in section 2 of the European Communities Act 1972) and any bylaws, statutory instruments, orders, notices, directions, codes of practice or Permissions properly and lawfully made or given under any of the foregoing (including any legislation enacted by any Scottish Parliament or assembly or similar body and any subordinate or delegated legislation made by the Scottish Ministers or other person deriving authority from such legislation); and
- (ii) any regulation, practice or concession or official directive, ruling, request, notice, guideline, statement of policy or practice by any relevant legislative authority, the European Union, governmental, local, international, national or other competent authority or agency (whether or not having the force of law in respect of which compliance by contractors is generally customary);

“Letter of Acceptance” means the Employer’s offer letter to the Contractor setting out the basis of this Contract and which letter describes each of the following, (i) the “Final Tender Total”, (ii) the “Contract Date” and the “Date for Commencement of the Works”; (iii) “the Form of Tender”, (iv) the “Conditions of Contract”, (v) the “Employer’s Requirements”, (vi) the “Specification”, (vii) the “Contractor’s Submission”; and (viii) the “Final Tender”;

“Location of the Conceptual Design Element” means the part of the Permanent Works to which the Conceptual Design Element is relevant and whose boundaries are identified in Appendix F to Form of Final Tender;

“Maintenance Certificate” means the certificate to be issued by the Engineer in accordance with Clause 61;

"**Milestone**" shall have the meaning given to it in Appendix J to Form of Final Tender;

"**Milestones Schedule**" has the meaning ascribed in Clause 55(1);

"**Named Subcontractor**" means a sub-contractor of any tier that it has been decided will use the Project Bank Account;

"**Overseeing Organisation**" means, unless otherwise provided in the Contract, the Employer;

"**Participant**" means the economic operator whose Final Tender has been the subject of the issue of the Letter of Acceptance;

"**Party**" means either the Contractor or the Employer;

"**Permanent Works**" means the permanent works to be constructed completed and maintained in accordance with the Contract;

"**Permissions**" means all:

- (i) permits, licences, registrations, consents, approvals, permissions, warrants, relaxations and the like which are required by Legislation; and
- (ii) third party consents which require to be obtained, in respect of the Design, construction, completion and maintenance of the Works;

"**Planting Works**" means the planting works necessary to ensure that the Design, construction, completion and maintenance of the Works comply with the requirements of the Employer's Requirements including the Specification;

"**Pollution**" means all pollution or contamination arising as a consequence of the Design construction completion and maintenance of the Works of water or land or the atmosphere resulting from the discharge, dispersal, release or escape of smoke, vapours, fumes, acids or gases, waste materials or other irritants, contaminants or pollutants which results in losses damage, bodily injury, however caused resulting from or as a consequence of such pollution or contamination;

"**Private Apparatus**" means all apparatus that would otherwise fall within the meaning of apparatus under Part IV of the New Roads and Street Works Act 1991 including but not limited to services, supplies, equipment plant or otherwise but which is not controlled, managed, operated or owned by an Undertaker;

"**Private Apparatus Works**" means any Works in relation to any Private Apparatus that are required for the purpose of the Design construction completion and maintenance of the Works but does not include any Undertakers Works;

"**Project Bank Account Documents**" means the following documents fully completed and executed by the Contractor and

which should form part of the Contractor's Submission; (a) the Checklist of Supplier(s) Information for Project Bank Account form, (b) the RBS Project Bank Account Entity Classification (Short Form) and (c) RBS Project Bank Account Entity Classification Form

The remaining Project Bank Account Documents are to be fully completed and executed by the Contractor and returned to the Employer within 5 Business Days following contract award; (d) the Project Bank Account Trust Deed, (e) the RBS New Account Opening Form, (f) the RBS Partnership Mandate, (g) the RBS to RBS Bankline Third Party Mandate, (h) the RBS Project Bank Account Entity Classification (Short Form) Controlling Person(s) Addendum, and (i) the RBS Project Bank Account Non-Financial Intermediary Form.

"Project Bank Account Online Banking" means the electronic online internet banking facilities provided by the Project Bank in respect of the Project Bank Account;

"Project Bank Account Trust Agreement" means the agreement to be entered into by the Employer and the Contractor in connection with the setting up and operation of the Project Bank Account;

"Project Bank Account" means the bank account used to receive payments from the Employer and make payments to the Contractor and the Named Subcontractors;

"Project Bank" means the bank which provides the Project Bank Account;

"Protestor" means any person or persons engaging in Protestor Action;

"Protestor Action" means any action taken or the threat of any action to be taken by any person or persons protesting against the carrying out of any part of the construction completion or maintenance of the Works which directly affects performance of any part of the construction completion or maintenance of the Works including without limitation action or threat of action which results in:

(i) increases in the cost of construction, completion or maintenance of the Works (including increased security costs and mitigation measures additional to those costs and measures referred to in sub-clauses 18(1) to 18(6); or

(ii) delays in the construction completion or maintenance of the Works or part thereof;

other than any action directed at the Contractor (or any of its sub-contractors) that is not directed at the Works;

"Protestor Related Costs" means direct costs properly incurred by the Contractor, that the Contractor would not otherwise have incurred, as a direct result of any of the circumstances identified in Clauses 18(8)(a) to (e) inclusive occurring in connection with Protestor Action or the threat of Protestor Action;

"Quality Authority" means the person or persons firm or company appointed from time to time by the Employer and notified in writing

to the Contractor to act as Quality Authority for the purposes of the Contract;

"Quality Management System" means a quality management system which meets the requirements of BS EN ISO 9001, BS EN ISO 14001 and OHSAS 18001 and any other provision of the Contract;

"Quality Plan" means a quality plan that meets the requirements of this Contract and that is to be provided by the Contractor to the Employer in accordance with this Contract;

"Quality System" means a Quality Management System;

"Reference Date" means the date not later than that on which invitation to participate documents are dispatched and are available for collection and is identified in Appendix A to Form of Final Tender. It is the date on which British Standards and British Standards Codes of Practice which do not themselves include a date are deemed to be incorporated in the Contract once the Letter of Acceptance has been issued;

"Reinforced Soil" means any part of the Works comprising a mass of bulky material of fragmented form (including frictional, cohesive frictional and cohesive material) having tensile reinforcing elements embedded in the mass so that the elements interact with the material to stabilise it, and includes any facing which may be provided for such part of the Permanent Works;

"Road Safety Auditor" means the firm or organisation or person of appropriate skill employed by the Contractor or the Designer (technically independent of the Designer and totally independent of the Checker) and acceptable to the Employer to undertake the independent Road Safety Audits. For the avoidance of doubt, prior to any employment by the Designer of the Road Safety Auditor, the Contractor shall carry out sufficient verification of the agreement/contract between the Designer and the Road Safety Auditor to satisfy himself that no part of such agreement/contract impacts on the technical independence of the Road Safety Auditor. Any such verification shall be recorded in writing as part of the Contractor's Quality System. No such contract/agreement shall permit the Designer to impact on the technical independence of the Road Safety Auditor;

"Schedule of Payments" shall mean "Appendix J to Form of Final Tender";

"Scottish Bank Holiday" means the following days:

- (i) New Year's Day (or in lieu of 1 January);
- (ii) 2 January (or in lieu of 2 January);
- (iii) Good Friday;
- (iv) Early May Bank Holiday;
- (v) Spring Bank Holiday;
- (vi) Summer Bank Holiday;
- (vii) St Andrew's Day;

- (viii) Christmas Day (or in lieu of 25 December); and
- (ix) Boxing Day (or in lieu of 26 December).

"Section" means a part of the Works separately identified in Appendix A to Form of Final Tender;

"Site" means the lands and other places on under in or through which the Works including but not limited to the Undertaker's Works are to be executed and includes, but is not limited to:

- (i) the Land Made Available by the Employer for the Works;
- (ii) the land provided by the Contractor for the Temporary Works including the land required by the Contractor for all site offices (including offices and the like provided for the Engineer) storage areas, car parking areas and the like; and
- (iii) land provided by the Employer to the Contractor at the Contractor's written request for the purposes of the Contractor carrying out temporary traffic management schemes for the execution of the Works, such land restricted to land contained within the trunk road boundary and which is additional to the Land Made Available by the Employer for the Works;

"Special Requirements" means the special requirements listed in Clause 77 and identified in Annex 1;

"Specification" means the specification described in the Letter of Acceptance and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer;

"Supply Chain Member" means a subcontractor of any tier for the Works or for the supply of goods and services in connection with this Contract other than a Contractor's subcontractor;

"Temporary Diversion of Traffic" means:

- (i) a temporary Carriageway Improvement onto which vehicular traffic is diverted from a public road; or
- (ii) a temporary footpath or bridleway onto which pedestrian or equestrian traffic is diverted from a public road; or
- (iii) a combination of (i) and (ii) or a temporary Carriageway Improvement as in (i) with an associated footway or way for use of animals and equestrian traffic or;
- (iv) a temporary private means of access onto which traffic is diverted from a private means of access;

but in all cases shall not include a central reserve crossover constructed to permit contraflow traffic on an existing Carriageway Improvement;

"Temporary Works" means all temporary works of every kind required in or about the construction completion and maintenance of the Works;

"Undertaker" means those persons, statutory bodies, Undertakers and other companies falling within the definitions set out in Section 107(4) or (5) in the New Roads and Street Works Act 1991 or sections 214, 224 and 225 of the Town and Country Planning (Scotland) Act 1997;

"Undertaker's Works" means the works of any Undertaker required for the purpose of the Design construction completion and maintenance of the Works but does not include any Private Apparatus Works;

"Uninsurable" means, in relation to a risk, that insurance is not available in respect of the Design, construction, completion and maintenance of the Works in the worldwide insurance market with reputable insurers of good standing in respect of that risk;

"Value Engineering" means a proposal to vary or adjust the Works offering a saving against the Tender Total;

"Works" means the Permanent Works together with the Temporary Works;

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| (2) | Words importing the singular also include the plural and vice-versa where the context requires. | Singular and Plural |
| (3) | Words in any gender includes all genders. | |
| (4) | The headings and marginal notes in the Conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract. | Headings and Marginal Notes |
| (5) | All references herein to Clauses are references to Clauses numbered in the Conditions of Contract and not to those in any other document forming part of the Contract. | Clause References |
| (6) | The word "cost" when used in the Conditions of Contract shall be deemed to include overhead costs whether on or off the Site except where the contrary is expressly stated. | Cost |
| (7) | Terms such as "including" , "including in particular" , "including but not limited to" , "including without limitation" , "such as" and "for example" are not to be read as exhaustive, or to limit, but may extend, the generality of the provisions to which they relate. | |
| (8) | References to a "day" shall mean a calendar day. | |
| (9) | References to a "week" shall mean a calendar week. | |
| (10) | References to a "month" shall mean a calendar month. | |

- (11) any reference to any Legislation shall be construed as a reference to the relevant piece of Legislation as from time to time amended, extended or re-enacted and to include any bylaws, statutory instruments, rules, regulations, orders, notices, directions, directives or Permissions made or given thereunder.

ENGINEER’S REPRESENTATIVE

- 2 (1) The functions of the Engineer’s Representative are to watch and supervise the construction completion and maintenance of the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor except as expressly provided hereunder to order any work involving delay or any extra payment by the Employer nor to make any variation of or in the Works.
- (2) The Engineer or the Engineer’s Representative may appoint any number of persons to assist the Engineer’s Representative in the exercise of his functions under sub-clause (1) of this Clause. He shall notify to the Contractor the names and functions of such persons. The said assistants shall have no power to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to discharge their functions and to secure their acceptance of materials or workmanship as being in accordance with the Specification and Drawings and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer’s Representative.
- (3) The Engineer may from time to time in writing authorise the Engineer’s Representative or any other person responsible to the Engineer to act on behalf of the Engineer either generally in respect of the Contract or specifically in respect of particular Clauses of these Conditions of Contract and any act of any such person within the scope of his authority shall for the purposes of the Contract constitute an act of the Engineer. Prior notice in writing of any such authorisation shall be given by the Engineer to the Contractor. Such authorisation shall continue in force until such time as the Engineer shall notify the Contractor in writing that the same is determined. Provided that such authorisation shall not be given in respect of any decision to be taken or certificate to be issued under Clauses 44, 48, 60(4), 61, 63 and 66.
- (4) If the Contractor shall be dissatisfied by reason of any instruction of any assistant of the Engineer’s Representative duly appointed under sub-clause (2) of this Clause he shall be entitled to refer the matter to the Engineer’s Representative who shall thereupon confirm reverse or vary such instruction. Similarly if the Contractor shall be dissatisfied by reason of any act of the Engineer’s Representative or other person duly authorised by the Engineer under sub-clause (3) of this Clause he shall be entitled to refer the matter to the Engineer for his decision.

Functions and Powers of Engineer’s Representative

Appointment of Assistants

Delegation by Engineer

Reference to Engineer or Engineer’s Representative

ASSIGNMENT AND SUB-LETTING

- 3 The Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or thereunder without the written consent of the Employer.

Assignment

- 4 (1) The Contractor shall not sub-let the whole of the Works. Except where otherwise provided by the Contract the Contractor shall not sub-let any part of the Works without the written consent of the Engineer and such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts defaults and neglects of any sub-contractor his agents servants or workmen as fully as if they were the acts defaults or neglects of the Contractor his agents servants or workmen. Provided always that the provision of labour on a piece-work basis shall not be deemed to be a sub-letting under this Clause. **Sub-Letting**
- (2) The Contractor shall obtain the Employer's consent prior to making any change in the Designer(s) named in the Contractor's Submission which consent shall not unreasonably be withheld. **Change of Designer**
- (3) The Contractor shall appoint a Checker with demonstrable relevant experience within the past 8 years as either a Designer or Checker on a trunk road project or similar major road project of equivalent scale and value to the Works. **Appointment of Checker**

CONTRACT DOCUMENTS

- 5 (1) (a) In the case of any conflict between the Conditions of Contract and any other of the documents contained in the Contract the Conditions of Contract shall prevail. **Conflicts in Documents Supplied by Employer**
- (b) In the case of any conflict between the Employer's Requirements and any other documents describing the Employer's requirements contained in the Contract the Employer's Requirements shall prevail.
- (c) In the case of any conflict within or between any of the documents describing the Employer's requirements (including but not limited to the Employer's Requirements, the Specification and the specified Design Manual for Roads and Bridges) for the Design, construction, completion and maintenance of the Works the interpretation which will give the safest and most conservative result will prevail and the Contractor shall be required to adhere to this requirement and to ensure that it is adhered to in turn by the Designer the Checker and the Road Safety Auditor.
- (2) In the case of any conflict within or between any documents supplied by the Contractor for the purposes of the Contract the same shall be resolved by the Engineer in consultation with the Contractor and the Employer and the resolution of same shall be confirmed in writing by the Engineer to both the Employer and the Contractor and any consequential alteration of the Permanent Works shall be subject to the approval of the Engineer. **Conflicts in Documents Supplied by Contractor**
- (3) Where within these Conditions of Contract reference is made to the "Engineer" such references shall be deemed to be a reference to the Engineer defined within Clause 1(1). In each and every case where in the several other documents forming the Contract where reference is made to the "Engineer" such references shall be **References to Engineer**

deemed to be references to the Engineer or such other party or parties as the context of each particular case requires in relation to the Contract which shall be construed accordingly notwithstanding such Clause 1(1) or anything else contained in the Contract.

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| (4) | In each and every case where in the several documents forming the Contract reference is made to ‘ British Railways Board ’ ‘ Network Rail ’ ‘ Scotrail ’ and the ‘ Railway ’ and the like such references shall be deemed to be a reference to ‘the British Railways Board ’ or their successors in relation to the Contract which shall be construed accordingly notwithstanding anything else contained in the Contract. | References to British Railways Board |
| (5) | The Contractor will be deemed to have made due allowance in his Final Tender for complying with the requirements of this Clause and no financial adjustment in favour of the Contractor will be made in respect of application of these requirements. | Contractor’s Responsibilities |
| 6 | (1) Upon acceptance of the Final Tender two copies of the drawings referred to in the Specification, the Conditions of Contract, the Specification and the Employer’s Requirements shall be furnished to the Contractor free of charge. Copyright of these documents shall remain in the Employer but the Contractor may obtain or make at his own expense any further copies required by him. At the completion of the Contract the Contractor shall return to the Engineer all copies of these documents whether provided by the Engineer or obtained or made by the Contractor. | Supply of Documents |
| | (2) Prior to the date of issue of each Certificate of Completion pursuant to Clause 48 the Contractor shall supply to the Engineer all of the information required to comply with the As Constructed Requirements as identified in Section 7 of the Employer’s Requirements relevant to each such Certificate of Completion. The Engineer shall be the sole judge of the adequacy of the aforesaid information for the purposes concerned and the supply of the information shall not be held to be complete until the Engineer has so confirmed in writing. | Information Supplied by Contractor (1) |
| | (3) Within 7 days from the date of the end of each Relevant Fifty Two Week Period the Contractor shall supply to the Engineer all the information required to comply with the As Constructed Requirements relevant at such each and every Relevant Fifty Two Week Period as set out in Section 7 of the Employer’s Requirements. The Engineer shall be the sole judge of the adequacy of the aforesaid information for the purposes concerned and the supply of the information shall not be held to be complete until the Engineer has so confirmed in writing. | Information Supplied by Contractor (2) |
| | (4) Clause 66 shall not apply to any dispute difference or question arising under sub-clauses (2) and (3) of this Clause. | Disputes not applicable |
| 7 | (1) The Engineer shall have full power and authority to require and shall require the Contractor to provide as soon as reasonably practicable in the circumstances of each case such information and drawings concerning the Contractor’s proposals as shall in the Engineer’s opinion be necessary for the purpose of the proper and adequate | Further Drawings and Information |

construction completion and maintenance of the Works in accordance with the Contract and the Contractor shall provide such information and drawings and be bound by them.

- (2) One copy of all Drawings, the Employer's Requirements and the Specification as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorised by the Engineer in writing.

One Copy of Documents to be Kept on Site

GENERAL OBLIGATIONS

- 8 (1) The Contractor shall subject to any other provision of the Contract, carry out the Design, construction, completion and maintenance of the Works and provide all labour materials Constructional Plant Temporary Works transport to and from and in and about the Site and everything whether of a temporary or permanent nature required in and for such Design construction completion and maintenance so far as the necessity for providing the same is specified or reasonably to be inferred from the Contract.

Contractor's General Responsibilities

Where the Contractor shall be a joint venture organisation or consortium organisation each member organisation who shall form part of any such joint venture organisation or consortium organisation shall be jointly and severally liable for the duties and obligations of the Contractor as identified within the Contract including the Contractor's duties and obligations for the Design, construction, completion and maintenance of the Works.

Where additional work of Design arises as the unavoidable result of any variation to any part of the Works instructed by the Engineer under Clause 51 the Contractor shall be bound to undertake and shall be responsible for such additional work of Design in accordance with this Clause.

Notwithstanding the earlier provisions of this Clause 8(1), where there is a requirement on the Contractor to instigate and carry out a Deemed Variation for Grouting Works or Planting Works, the Contractor shall be bound to undertake and shall be responsible for such additional work of Design and Works for such Grouting Works or Planting Works.

- (2) (a) The Contractor shall exercise reasonable skill, care and diligence with a view to securing that the Design, construction, completion and maintenance of the Works shall meet the requirements of the Employer's Requirements and shall take full responsibility for the adequacy stability and safety of all Site operations, construction completion and maintenance.
- (b) In carrying out all his Design obligations under the Contract (including the selection of materials and plant for incorporation in the Works to the extent that these are not specified in the Employer's Requirements) the Contractor shall exercise reasonable skill care and diligence.

Contractor exercises Reasonable Skill, Care and Diligence in Design and Works

The Contractor shall carry out the Design and shall construct, complete and maintain the Works in accordance with the requirements and standards and the like identified in the Contract and further shall ensure that the Design and the construction, completion and maintenance of the Works shall be developed and implemented:

- (i) in accordance with Good Industry Practice, and
- (ii) so as to ensure that all the Employer’s requirements including specifications and methodologies and the like are met.

(3) The Contractor shall bear responsibility for the Design as if for such purpose he had carried out the whole of the Design himself and if the Designer and Checker shall fail to agree on any matter relating to the Contract the Contractor shall ensure that the matter is resolved expeditiously by reference to an independent person of skill appointed by the Contractor and approved by the Employer.

Contractor's Responsibility for Design

Such independent person of skill shall decide whether the proposal put forward by the Designer or the proposal put forward by the Checker shall be the Design.

(4) Notwithstanding any other provision of the Contract when the Design is completed or if it is completed in stages when each stage is completed the Contractor shall forthwith submit to the Engineer one paper print and two electronic copies of every drawing relevant to the Design or Design stage including all working drawings giving details necessary for manufacture and construction. Electronic copies of drawings shall be submitted in Portable Document Format (.pdf) and AutoCAD 2004 format (.dwg) on compact disc or such other method of transfer and/or storage as the Employer may reasonably request.

One Copy of Design Drawings Supplied to Engineer

(5) (a) The Contractor shall submit to the Engineer all certificates required by the Contract in respect of the Works and no part of the construction of any part of the Works shall be commenced unless receipt of the relevant certificate has been acknowledged by the Engineer.

Contractor's Responsibility to Supply Certificates

(b) The Contractor shall obtain and submit to the Engineer such certification of the Undertaker’s Works as may reasonably be required of and from an Undertaker.

(6) (a) To the extent that the Interim Construction Certificate the Final Construction Certificate each Interim Post Construction Certificate and the Post Construction Certificate require the Contractor and the Designer to certify that reasonable skill, care and diligence has been exercised with a view to securing that the Works have been constructed in accordance with the Employer’s Requirements the Contractor shall ensure that:

Contractor Ensures Designer Complies with Contract

- (i) the Designer supervises (by physical inspection of the Works) the construction, and maintenance of the Works including sampling and testing required by the Contract in

such manner and to such extent as may be considered reasonable by the Engineer; and

- (ii) resulting from any such inspection or otherwise the Designer notifies the Contractor in writing (with a copy to the Engineer) of any change in the Contractor's arrangements which is necessary in the opinion of the Designer for the proper discharge of the Contractor's obligations in respect of the Contract; and
 - (iii) the Designer notifies the Contractor in writing (with a copy to the Engineer) of any sample or test which the Designer may consider reasonably necessary in connection with the Contract and the Contractor shall carry out such sample or test and supply a copy all results thereof to the Engineer.
- (b) Without prejudice to the Contractor's responsibilities under the Contract if at any time the Engineer considers that the Contractor's arrangements are insufficient for the proper discharge of his obligations under this sub-clause (6) he shall so inform the Contractor in writing and the Contractor shall thereupon take such steps at his own cost as are necessary and the Engineer may approve for rectifying such insufficiency. The Engineer shall not be bound to sign in acknowledgement the Interim Construction Certificate or the Interim Post Construction Certificate in respect of any period during which such insufficiency occurs. Without prejudice to Contractor's responsibilities under the Contract the Engineer shall sign in acknowledgement such certificates retrospectively upon the Contractor demonstrating to the satisfaction of the Designer, Checker, where appropriate the Road Safety Auditor and the Engineer that work carried out during such period complies with the requirements of the Contract.
- (c) No claim of any kind shall be admissible on the ground that the Contractor or the Designer relied upon the supervision of the Engineer when signing the Interim Construction Certificate the Final Construction Certificate the Interim Post Construction Certificate and the Post Construction Certificate or when discharging any of the Contractor's other duties in respect of the Contract.

9. (1) The Contractor shall prepare and deliver to the Employer on a monthly basis as from the Date for Commencement of the Works and until the issue of a Certificate of Completion for the whole of the Works pursuant to Clause 48 a progress report on the Works and the activities carried out by the Contractor in connection with the Contract during the preceding calendar month which report shall be delivered to the Employer and the Engineer by a date in each month to be agreed between the Parties but no later than 10 days after the reporting month. The progress report shall contain to the satisfaction of the Engineer as a minimum the following sections:
- i. Health and Safety
 - ii. Design Progress
 - iii. Construction Progress,
 - iv. Quality
 - v. Financial Position

Monthly meetings and progress reports

- vi. Environmental, Ecology and Landscaping
- vii. Sustainability including Carbon Management and Waste Management
- viii. Traffic Management
- ix. Sub-contractors
- x. Utilities
- xi. Variations
- xii. Disputes
- xiii. Third Party Claims and Insurances
- xiv. Communications
- xv. Community Benefits
- xvi. Progress Photographs

(2) The Contractor shall attend monthly progress meetings with the Employer and the Engineer and the Contractor shall ensure the attendance of any persons, sub-contractor or supplier whose attendance is requested by the Employer or who the Contractor otherwise considers should attend the meeting. The Engineer shall prepare and circulate minutes of each monthly meeting to the Employer and the Contractor following each meeting.

10. (1) The Contractor shall be entitled to provide to the Employer at his own expense a retention bond from an insurance company or bank who shall be jointly and severally bound with the Contractor in the maximum sum of three percent of the Final Tender Total under the terms of said bond.

Sureties

(2) The said retention bond shall be provided by an insurance company or bank acceptable to the Employer and shall be in the form of the Model Retention Bond contained in and forming Annex 2 to the Conditions of Contract.

The said retention bond shall be in place until the issue of the Maintenance Certificate.

The obtaining of said retention bond and all costs incurred thereby shall be the responsibility of the Contractor.

Any agreement decision, award or other determination touching or concerning the relevant date for the discharge of the sureties' or surety's obligations under the said retention bond shall be wholly without prejudice to the resolution or determination of any dispute or difference between the Employer and the Contractor pursuant to any other provision of the Contract including but not limited to the provisions of Clause 66.

11. (1) The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his Final Tender as to the nature of the ground and sub-soil the form and nature of the Site the extent and nature of the work and materials necessary for the completion of the Works the means of communication with and access to the Site the accommodation he may require and in general to have obtained for himself all necessary information as to risks contingencies and all other circumstances influencing or affecting his Final Tender.

Inspection of Site

Notwithstanding the earlier provisions of this Clause 11(1), where within the Contract there is a Priced Schedule of Rates and Prices for Grouting Works and where during the progress of the Design, construction and completion of the Works the Contractor discovers any abandoned mine workings or sub-surface voids that are within the zone of influence of the Permanent Works the Contractor shall not be liable for the costs of any subsequent Grouting Works. The Contractor shall be liable for any other costs whatsoever resulting from such Grouting Works.

Notwithstanding the earlier provisions of this Clause 11(1), where within the Contract there is not a Priced Schedule of Rates and Prices for Grouting Works and where during the progress of the Design, construction and completion of the Works the Contractor discovers any abandoned mine workings or sub-surface voids that are within the zone of influence of the Permanent Works the Contractor shall be liable for the costs of any subsequent Grouting Works. The Contractor shall be also liable for any other costs whatsoever resulting from such Grouting Works.

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| (2) | The Contractor shall be deemed to have verified the adequacy of the information relating to the Undertaker's Works and Private Apparatus Works for the purpose of the obligations under the Contract, including but not limited to those obligations in respect of the Special Requirements in Relation to Undertaker's Works | Verification of Undertaker's Works and Private Apparatus Works |
| (3) | The Contractor shall be deemed to have satisfied himself before submitting his Final Tender as to the sufficiency of the Final Tender which shall (except so far as it is otherwise provided in the Contract) cover all his obligations under the Contract. No claim by the Contractor for additional payment nor for any extension of time for completion shall be allowed on the grounds that physical conditions or artificial obstructions which could or could not have been foreseen have affected the Design or construction or completion or maintenance of the Works. | Sufficiency of Final Tender |
| (4) | The Employer does not warrant the accuracy of any information in connection with ground conditions which may have been provided at any time by or on behalf of the Employer or any other source or that any condition or circumstance shall prevail at the Site and its surroundings whether a condition applying generally or to particular parts or positions. In respect of this sub-clause 11(4) the Contractor shall be deemed not to have relied on any such information referred to in this Clause 11(4) unless to the extent that he has satisfied himself as to the accuracy of such information for the purposes of the Design, construction, completion and maintenance of the Works. | Accuracy of Information |
| 12 | (1) If during the execution of the Works the Contractor shall encounter anything (including anything which shall result in Grouting Works) which invalidates any of his Design assumptions or requires amendments to his method of construction he shall immediately take all measures to change the Design to bring it in line with the requirements of the Contract. Details of any amendments to the Contractor's methods of construction shall be submitted in writing as soon as possible to the Engineer for consent if required by the | Invalidation of Design Assumptions |

Engineer in accordance with Clause 14. Additionally the Contractor shall undertake all necessary Planting Works including all necessary measures to comply with the requirements of the Contract.

- (2) Anything which invalidates any of the Contractor's Design assumptions as described previously in this Clause shall not relieve the Contractor of any of his responsibilities under the Contract including the requirements for the provision to the Engineer of Design Certificate, Design Check Certificate Road Safety Audit Certificate and all other certificates in respect of any amendments to the Design. **Design and Design Check Certificate**
- 13** (1) Subject to the other requirements of the Contract save in so far as it is legally or physically impossible the Contractor shall Design construct complete and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter connected therewith (whether mentioned in the Contract or not). The Contractor shall take instructions and direction only from the Engineer or (subject to the limitations referred to in Clause 2) from the Engineer's Representative. **Works to be to Satisfaction of Engineer**
- (2) If in pursuance of sub-clause (1) of this Clause the Engineer shall order any variation the same shall be deemed to have been given pursuant to Clause 51. **Order Variations**
- 14** (1) (a) Within 21 days after the Contract Date the Contractor shall submit to the Engineer for his approval a programme for the Design, construction and completion of the Works (the "**Contractor's Programme**"). Notwithstanding such, the Contractor shall carry out the measures, mitigation and security measures and the like identified in sub-clauses 18(1) to 18(6). **Contractor's Programme to be Submitted**
- The Contractor's Programme shall show the order of procedure in which the Contractor proposes to carry out the Design, construction and completion of the Works and on the basis that no part of the Works shall commence until the Design or relevant stage of Design shall be complete and that all the necessary certification required under the Contract has been acknowledged.
- The Contractor shall provide such further details and information as the Engineer may reasonably require in regard thereto. Each item relating to Design in the Contractor's Programme shall contain and show a reasonable period for work to be undertaken by the Checker.
- The Contractor's Programme shall also contain and show a reasonable period for the preparation submission to and acknowledgement by the Engineer of all the certificates identified in the Certification Procedure including the Design and Design Check Certificates, the Road Safety Audit Certificates and the Consultation Certificates all as identified in the Employer's Requirements.

Notwithstanding any other provision of the Contract the Contractor shall at the same time also provide in writing for the information of the Engineer a general description of the arrangements and methods of construction, together with a list of all necessary method statements and procedures and the like which the Contractor proposes to adopt for the carrying out of the Design, construction, completion and maintenance of the Works.

Notwithstanding any other provision of the Contract the Contractor shall ensure that the Contractor's Programme contains adequate provision for Undertaker's Works and Private Apparatus Works and the like.

Notwithstanding any other provision of the Contract the Contractor shall be liable at his own cost for making any changes to the Contractor's Programme for the Design, construction and completion of the Works resulting from any Grouting Works or Planting Works.

- (b) The Engineer may within 14 days after receipt of the Contractor's Programme for the Design, construction and completion of the Works reject it in writing with reasons or requirement to the Contractor to supply further information to clarify or substantiate the said programme or to satisfy the Engineer as to its reasonableness having regard to the Engineer and the Contractor's other obligations under the Contract. Such further information may require the submission of a revised Contractor's Programme.
- (c) Should the Engineer reject any Contractor's Programme under Clause 14(1)(b) the Contractor shall within 14 days of such rejection submit a revised Contractor's Programme.
- (d) Upon the receipt of such further information identified in Clause 14(1)(b) the Engineer may within a further 14 days reject the revised Contractor's Programme in accordance with Clause 14(1)(b).
- (2) Should it appear to the Engineer at any time that the actual progress of the Design or the construction or completion of the Works does not conform with the approved Contractor's Programme identified in sub-clause (1) of this Clause the Engineer shall be entitled to require the Contractor to produce a revised Contractor's Programme showing the revisions to the approved Contractor's Programme necessary to ensure the completion of the Works within the time for completion as defined in Clause 43 or extended time granted pursuant to Clause 44(2). **Revision of Programme**
- (3) Notwithstanding any other provision of the Contract, including any provision of Clause 36, if requested by the Engineer the Contractor shall submit at such times and in such detail as the Engineer may reasonably require in respect of the Works such information pertaining to the methods of construction (including Temporary Works and the use of the Constructional Plant) which the Contractor proposes to adopt or use and such calculations of **Methods of Construction**

stresses strains and deflections that will arise in the Permanent Works or any parts thereof during construction from the use of such methods as will enable the Engineer to decide whether if these methods are adhered to the Works can be executed in accordance with the Drawings and Specification and without detriment to the Permanent Works when completed.

- (4) The Engineer shall inform the Contractor in writing within a reasonable period after receipt of the information submitted in accordance with sub-clause (3) of this Clause either: **Engineer's Consent**

- (a) that the Contractor's proposed methods have the consent of the Engineer; or
- (b) in what respects in the opinion of the Engineer they fail to meet the requirements of the Contract or will be detrimental to the Permanent Works.

In the latter event the Contractor shall take such steps or make such changes in the said methods as may be necessary to meet the Engineer's requirements and to obtain his consent. The Contractor shall not change the methods which have received the Engineer's consent without the further consent in writing of the Engineer which shall not be unreasonably withheld.

- (5) If the Engineer's consent to the proposed methods of construction shall be unreasonably delayed or if the requirements of the Engineer pursuant to sub-clause (4) of this Clause could not reasonably have been foreseen by an experienced Contractor at the time of Final Tender and if in consequence of any of the aforesaid the Contractor unavoidably incurs delay or cost the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(1) be paid in accordance with Clause 60 such sums in respect of the cost incurred as the Engineer considers fair in all the circumstances. **Delay and Extra Cost**

Notwithstanding the earlier provisions of this Clause 14(5), in respect of any matters in connection with or resulting from Grouting Works or Planting Works, the Engineer shall not take any such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(1) not be paid in accordance with Clause 60 any such sums in respect of the cost incurred as a result of any Design or Works in connection with or resulting from Grouting Works or Planting Works.

- (6) Approval by the Engineer of the Contractor's Programme in accordance with sub-clauses (1) and (2) of this Clause and the consent of the Engineer to the Contractor's proposed methods of construction in accordance with sub-clause (4) of this Clause shall not relieve the Contractor of any of his duties or responsibilities under the Contract. **Responsibility Unaffected by Approval**

- 15** (1) Notwithstanding any other provision of the Contract, the Contractor shall give or provide all necessary superintendence **Contractor's Superintendence**

during the execution of the Works and as long thereafter as the Engineer may consider necessary. Such superintendence shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required the hazards likely to be encountered and methods of preventing accidents) as may be requisite for the satisfactory construction of the Works.

- (2) The Contractor or a competent and authorised agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn) is to be constantly on the Works and shall give his whole time to the superintendence of the same. Such authorised agent or representative shall be in full charge of the Works and shall receive on behalf of the Contractor directions and instructions from the Engineer or (subject to the limitations of Clause 2) the Engineer's Representative. The Contractor or such authorised agent or representative shall be responsible for the safety of all operations.

Contractor's Agent

- 16 The Contractor shall employ or cause to be employed in and about the execution of the Works and in the superintendence thereof only such persons as are careful skilled and experienced in their several trades and callings and the Engineer shall be at liberty to object to and require the Contractor to remove from the Works any person employed by the Contractor in or about the execution of the Works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety which may be set out in the Contract or persists in any conduct which is prejudicial to safety or health and such persons shall not be again employed upon the Works without the permission of the Engineer.

Removal of Contractor's Employees

- 17 The Contractor shall be responsible for the true and proper setting-out of the Works and for the correctness of the position levels dimensions and alignment of all parts of the Works and for the provision of all necessary instruments appliances and labour in connection therewith. If at any time during the progress of the Works any error shall appear or arise in the position levels dimensions or alignment of any part of the Works the Contractor on being required so to do by the Engineer shall at his own cost rectify such error to the satisfaction of the Engineer unless such error is based on incorrect data supplied in writing by the Engineer or the Engineer's Representative in which case the cost of rectifying the same shall be borne by the Employer. The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks sight rails pegs and other things used in setting out the Works.

Setting-Out

- 18 (1) Notwithstanding any other provision of the Contract the Contractor shall be responsible for taking all:
 - (a) reasonable measures; or
 - (b) procuring all reasonable measures

Protector Action activities to be carried out by the Contractor

to secure the Site from access by Protestors or the threat of Protestor Action.

- (2) Notwithstanding any other provision of the Contract the Contractor shall be responsible for:
- (a) the removal from the Site of any Protestors; or
 - (b) procuring the removal from the Site of any Protestors (other than by through the offices of the Employer).

The Employer shall not be responsible for either the removal or for procuring the removal of Protestors.

- (3) Notwithstanding any other provision of the Contract, the Contractor shall take all reasonable measures to mitigate any impact on the performance of the Design or the construction, completion and maintenance of the Works that shall result from Protestor Action or the threat of Protestor Action.
- (4) Such mitigation measures as are referred to in sub-clause 18(3) shall include but shall not be limited to the Contractor, subject to any other provisions of the Contract:

- (a) securing the Land Made Available by the Employer (including but not limited to maintaining accesses for third parties) for the Works by the design, construction, completion and maintenance of a temporary boundary fence or boundary fences as an immediate Site activity by the Contractor after the Date for Commencement of the Works.

Further, the Contractor shall maintain such fences thereafter including maintaining during the construction of the Works; and

- (b) ensuring that secure fencing, gates and other reasonable preventative security measures shall be designed, constructed, completed and maintained by the Contractor as a Site activity as a concurrent and integral part of the provision of the Contractor's Site compounds, office accommodation, depots and other storage areas, vehicles, Constructional Plant and materials and all other Contractor's Site facilities and the like.

Further, the Contractor shall maintain such secure fencing, gates and other reasonable preventative security measures to all such compounds, office accommodation, depots and other storage areas, vehicles and Constructional Plant and materials and all other Contractor's Site facilities, thereafter including during construction of the Works.

- (5) Notwithstanding any other provision of the Contract the Contractor shall be given access to the Land Made Available by the Employer

for the Works by the date(s) or times in accordance with any other provision of the Contract, to carry out such mitigation measures as referred to in sub-clauses 18(1) to 18(6).

Further, the Contractor shall maintain such mitigation and security measures to such facilities and other Temporary Works and Permanent Works thereafter including during construction of the Works.

(6) Notwithstanding any other provision of the Contract the Contractor shall consult and liaise with the Police:

(a) in the event of Protestor Action: or

(b) where there may be or shall be a threat of Protestor Action.

(7) All such measures including mitigation measures and the like and other such obligations on the Contractor identified in sub-clauses 18(1) to 18(6) inclusive shall be deemed to be included in the Final Tender Total and the Contractor shall not be entitled to any payment or an extension of time in connection with the carrying out of its obligations under sub-clauses 18(1) to 18(6).

(8) (a) Obstruction of occupation from the Site, the Works or Constructional Plant;

(b) damage to the Site, the Works or Constructional Plant;

(c) loss of or theft to or from the Site, the Works or Constructional Plant;

(d) injury to any persons entitled to be upon the Site; or

(e) delay and disruption to the construction, completion or maintenance of the Works

Protestor Action related circumstances entitling the Contractor to claim time and money

in connection with Protestor Action or the threat of Protestor Action shall require the Engineer to take such circumstance(s) into account in determining any extension of time to which the Contractor may be entitled under Clause 44 provided always that the Contractor has complied with its obligations under sub-clauses 18(1) to 18(7) in connection with the particular Protestor Action or threat of Protestor Action.

In connection with all such circumstance(s) described within this sub-clause 18(8) in connection with Protestor Action or the threat of Protestor Action, and notwithstanding any other provision of the Contract but provided always that the Contractor has complied with its obligations under sub-clauses 18(1) to 18(7), the Contractor's entitlement to payment under the Contract shall be limited to Protestor Related Costs recoverable pursuant to sub-clauses 18(9) to 18(19).

(9) Subject to:

- (a) the Contractor having complied with Clauses 18(1) to 18(7);
- (b) the provisions of Clauses 18(10), 18(11), (12), (13) and 18(17),
- Payment in respect of Protestor Action**

where any of the circumstances described in Clauses 18(8)(a) to (e) inclusive in connection with Protestor Action or the threat of Protestor Action shall have occurred the Employer shall in accordance with Clause 60 pay to the Contractor an amount equal to [REDACTED] of the Protestor Related Costs that have been determined by the Auditor pursuant to Clauses 18(10) to (17) inclusive.

(10) Without prejudice to the provisions of Clause 18(19), the [REDACTED] share of Protestor Related Costs payable by the Employer to the Contractor shall not exceed £[REDACTED] in aggregate.

(11) Notwithstanding any other provisions of the Contract, the Employer shall not be liable to pay to the Contractor any Protestor Related Costs:

- (i) Unless the Contractor has carried out (or used best endeavours to carry out) all reasonable measures and the like identified elsewhere in the Contract including carrying out mitigation and the like in respect of same. Such reasonable measures shall include the obligations on the Contractor in Clauses 18(1) to (6) inclusive; and
- (ii) Unless the Contractor shall have furnished full details of such costs (including all records) to the Auditor pursuant to the provisions of Clauses 18(12), 18(13), 18(17) and 18(19) and unless such costs have been determined by the Auditor as being properly incurred by the Contractor as a result of Protestor Action or the threat of Protestor Action.

(12) Where the Contractor incurs Protestor Related Costs the Contractor shall submit full details of such Protestor Related Costs, each month following the month in which the relevant circumstance giving rise to the Protestor Related Costs first occurred, to the person(s) firm or organisation ("the Auditor") appointed by the Employer (and acceptable to the Contractor acting reasonably) for determination under the other provisions of sub-clauses 18(9) to 18(19).

(13) Notwithstanding the provisions of Clause 18(12) the Contractor in the event of any such circumstances identified in Clauses 18(8)(a) to (e) inclusive occurring shall submit to the Engineer's Representative daily all Site or other records in connection with Protestor Action or the threat of Protestor Action including but not limited to:

(a) labour time sheets

(b) Constructional Plant time sheets;

- (c) records of damage to the Works;
- (d) records of damage to materials; and
- (e) costs under any other headings

in connection with Protestor Action or the threat of Protestor Action.

Such information shall also be provided by the Contractor to the Auditor.

- (14) The Auditor on behalf of the Employer shall carry out an audit in order to determine the amount of Protestor Related Costs that shall be payable to the Contractor in accordance with the provisions of Clause 18(9).
- (15) All such Protestor Related Costs so determined by the Auditor shall be certified by the Engineer and paid by the Employer in accordance with the provisions of Clause 60.
- (16) Notwithstanding any other provision of this Contract, the [REDACTED] share of such Protestor Related Costs that is not paid by the Employer and that is borne by the Contractor shall not be reimbursed to or recoverable by the Contractor under any other provision of this Contract (including Clause 18(19)).
- (17) Notwithstanding the other provisions of the Contract, the Contractor shall provide all such information and access to the Employer, the Engineer and the Auditor to meet the requirements of the Employer, the Engineer and the said Auditor in respect of determining payment to the Contractor of Protestor Related Costs.

In the event that the said information or access shall not be provided in accordance with the provisions of this Clause or the other provisions of the Contract the Employer shall have no liability to pay the Contractor any Protestor Related Costs.

- (18) Notwithstanding any other provisions of the Contract, in the event that the [REDACTED] share of Protestor Related Costs:
 - (i) determined by the Auditor and payable by the Employer;
 - or
 - (ii) in the opinion of the Employer

shall exceed or may likely exceed the limit of payment to the Contractor by the Employer (amounting to an aggregated total of no more than £[REDACTED]) the Employer shall be entitled to determine the Contract forthwith.

In the event of any such determination and subject to the other provisions of the Contract the Contractor shall be paid by the Employer in accordance with the provisions of Clause 18(20).

(19) Where the Employer chooses not to determine the Contract pursuant to the provisions of Clause 18(18) the Employer shall pay all subsequent Protestor Related Costs that:

- (a) shall be in excess of an aggregate total amount of Protestor Related Costs of £[REDACTED] incurred by the Contractor; and
- (b) result from any continuing or further Protestor Action or continuing or further threat of Protestor Action, provided always that the Employer's liability for Protestor Related Costs up to an amount of £[REDACTED] shall be limited to the Employer's [REDACTED] share being £[REDACTED].

Such payment(s) shall be subject to:

- (c) the Contractor complying with the obligations of the Contractor contained in Clauses 18(11), (12), (13) and (17) in respect of such continuing or further Protestor Action or continuing or further threat of Protestor Action; and
- (d) an audit that shall be carried out by the Auditor on behalf of the Employer in order to determine the amount of any Protestor Related Costs that shall be payable to the Contractor in accordance with the provisions of this Clause 18(19).

All such Protestor Related Costs so determined by the Auditor shall in accordance with Clause 60 be certified by the Engineer and paid by the Employer.

Notwithstanding any waiver or failure by the Employer to determine the Contract in accordance with the provisions of Clause 18(18) the Employer shall be entitled thereafter at any time to determine the Contract forthwith. In the event of such a determination and subject to the other provisions of the Contract, the Contractor shall be paid by the Employer in accordance with the provisions of Clause 18(20).

(20) If the Contract shall be determined as a result of Protestor Action or the threat of Protestor Action the Contractor shall be paid by the Employer (insofar as such amounts or items have not already been covered by payment on account made to the Contractor) for all work executed prior to the date of determination of the Contract at the rates and prices provided in the Contract, including:

- (i) rates and prices where relevant for Grouting Works;
- (ii) prices where relevant contained in the Breakdown of Final Tender;
- (iii) prices where relevant contained in the Milestones Schedule and in addition where relevant:

- (a) the amounts payable in respect of any preliminary items and Design so far as the work or service

comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of any such items the work or service comprised in which has been partially carried out or performed;

- (b) the cost of materials or goods reasonably ordered for the Design and the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery and provided that such materials or goods have been delivered to the Site or otherwise into the safe custody of the Employer (such materials or goods becoming the property of the Employer upon such payment being made by him);
- (c) the reasonable cost of the Contractor removing its Constructional Plant from the Site.

19 (1) The Contractor shall throughout the progress of the Works:

Safety and Security

- (a) have full regard for the safety of all persons entitled to be upon the Site and shall keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons and shall include in connection with the Works the provision and maintenance at his own cost all lights guards fencing warning signs and watching when and where necessary or required by the Engineer or by any competent statutory or by other authority for the protection of the Works or for the safety and convenience of the public or others;
- (b) use all reasonable means which shall be necessary to:
 - (i) secure the Site;
 - (ii) protect the Site, the Works, Contractor's office and storage facilities and the like, Constructional Plant and materials and the like from obstruction of occupation, of damage;
 - (iii) protect any persons entitled to be upon the Site from theft or injury; or
 - (iv) prevent unauthorised access to the Site;

all such reasonable means and measures and the like used by the Contractor shall require to be acceptable to both the Engineer and the Police.

(2) If under Clause 31 the Employer shall carry out work on the Site with his own workmen he shall in respect of such work:

Employer's Responsibilities

- (a) have full regard to the safety of all persons entitled to be upon the Site; and
- (b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31 the Employer shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

20 (1) The Contractor shall take full responsibility for the care of the Works from the date of the commencement thereof until 14 days after the Engineer shall have issued a Certificate of Completion for the whole of the Works pursuant to Clause 48. Provided that if the Engineer shall issue a Certificate of Completion in respect of any Section or part of the Permanent Works before he shall issue a Certificate of Completion in respect of the whole of the Works the Contractor shall cease to be responsible for the care of that Section or part of the Permanent Works 14 days after the Engineer shall have issued the Certificate of Completion in respect of that Section or part and the responsibility for the care thereof shall thereupon pass to the Employer. Provided further that the Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken to finish during the Period of Maintenance until such outstanding work is complete.

Care of the Works

- (2) The Excepted Risks that the Contractor shall not be liable for under Clauses 20 to 24 inclusive shall be any loss or damage to the extent that the same shall be:
- (i) due to:
 - (a) riot;
 - (b) war;
 - (c) invasion;
 - (d) act of foreign enemies; or
 - (e) hostilities (whether war be declared or not);
 - (ii) due to:
 - (a) civil war;
 - (b) rebellion;
 - (c) revolution;
 - (d) insurrection; or
 - (e) military or usurped power;
 - (iii) arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of:
 - (a) nuclear fuel;
 - (b) radioactive toxic explosive; or
 - (c) other hazardous properties of any explosive nuclear assembly; or nuclear component thereof;
 - (iv) arising from pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (v) due to the use or occupation by the:
 - (a) Employer;
 - (b) their agents;
 - (c) servants;
 - (d) any contractor other than the Contractor (not being employed by the Contractor); or
 - (e) the publicof any part of the Works and subject to any other provision of the Contract.

Excepted Risks

- (3) (i) In the event of any loss, damage or injury from any cause whatsoever (except such loss, damage or injury due to any of the Excepted Risks) to:
- Responsibility
for
Reinstatement**
- (a) the Design;
 - (b) any materials plant or equipment forming part of the Works and for incorporation within the Works;
 - (c) the Works; or
 - (d) any person on the Site including but not limited to persons entitled to be on the Site

while the Contractor shall be responsible for the care of such or during the execution of the Works the Contractor shall at his own cost replace or rectify such loss damage or injury such that at completion of the Works and in any case at the end of the period specified in sub clause (1) of this Clause the Works shall be in good order and condition and shall comply with any other provision of the Contract and that the Employer shall have no liability in relation to any injuries claims or otherwise pursuant to sub clause (3) of this Clause.

- (ii) Where any such loss damage or injury arises from any of the Excepted Risks the Contractor shall if required, as part of the Works, repair and make good the same as aforesaid at the expense of the Employer.
- (4) Subject to the other provisions of the Contract including sub-clauses 60(3)(d) to (m) inclusive, Clause 64 and sub-clause 65(5)(A):
- (a) obstruction of occupation from the Site the Works or Constructional Plant;
 - (b) damage to the Site the Works or Constructional Plant; or
 - (c) loss of or theft from the Site the Works or Constructional Plant; or
 - (d) injury to any persons entitled to be upon the Site

in connection with:

- (i) Protestor Action; or
- (ii) any threat of Protestor Action

shall not be an Excepted Risk in terms of sub-clause (3) of this Clause.

- 21** (1) Notwithstanding any other provision of the Contract and without prejudice and in addition to any other right or remedy that the Employer may have the Contractor shall except if and so far as the Contract provides otherwise and subject to the exceptions set out in sub clause (2) of this Clause (the "Exceptions") indemnify and keep indemnified the Employer against all:
- (a) losses;
 - (b) actions;
 - (c) claims;
- Damage to
Persons and
Property**

- (d) costs;
- (e) damages;
- (f) demands; or
- (g) expenses (including but not limited to all legal costs and disbursements)

incurred by or made against the Employer in respect of any;

- (i) injury to or death of any person; or
- (ii) loss of or damage to any property (other than the Works) but including surface or other damage to land within the Site suffered by any persons who own or occupy such land

that may arise out of, in connection with, or in consequence of the construction completion and maintenance of the Works.

(2) The Exceptions referred to in sub clause (1) of this Clause that shall be the responsibility of the Employer shall be: **The Exceptions**

- (i) death of or injury to persons or loss of or damage to property that results from any negligent act or omission or breach of any statutory duty by the Engineer or the Employer or any contractor other than the Contractor (not being employed by the Contractor); or for any:
 - (a) claims;
 - (b) demands;
 - (c) proceedings;
 - (d) damages;
 - (e) costs; or
 - (f) charges and expenses

in respect thereof or in relation thereto;
- (ii) damage to crops being on the Site (but only in so far as possession or access has not been given to the Contractor);
- (iii) the use or occupation of land provided by the Employer for the purposes of the execution of the Works (including consequent losses of crops) or interference whether temporary or permanent with any right of way, light, air or water or any other form of servitude or wayleave that are the unavoidable result of the execution of the Works in accordance with the Contract;
- (iv) the right of the Employer to execute any part of the Works on over under in or through any land; and
- (v) damage that shall be the unavoidable result of the execution of the Works.

(3) The Employer shall subject to the provisions of:

- (i) sub clause (4); and
- (ii) sub clause (5) of this Clause

indemnify the Contractor from and against all:

- (i) claims;
- (ii) demands;
- (iii) proceedings;
- (iv) damages;
- (v) costs; or
- (vi) charges and expenses

for the Exceptions referred to in sub clause (2) of this Clause.

Indemnity by Employer

(4) The Contractor’s liability to indemnify the Employer pursuant to sub clause (1) of this Clause shall be reduced in proportion to the extent that the negligent act or omission of the Engineer or the Employer or any contractor other than the Contractor (not being employed by the Contractor) may have contributed to the said:

- (i) death;
- (ii) injury;
- (iii) loss; or
- (iv) damage

Contractor’s Liability to Indemnify

(5) The Employer’s liability to indemnify the Contractor under sub clause (3) of this Clause for matters referred to in sub clause (2) of this Clause shall be reduced in proportion to the extent that the act or neglect of the Contractor may have contributed to the said:

- (i) death;
- (ii) injury;
- (iii) loss; or
- (iv) damage

The Employer’s liability limited due to the extent of neglect of Contractor

(6) The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to:

- (i) any work person or person in the employment of the Contractor; or
- (ii) any sub-contractor

The Employer’s limit on liability for damages or compensation

except to the extent where such accident or injury results from or shall have been contributed to by the:

- (i) negligent act;
- (ii) omission; or
- (iii) default

of the Employer

The Contractor shall indemnify and keep indemnified the Employer against all such:

- (i) damages and compensation (except as aforesaid);
- (ii) claims;
- (iii) demands;
- (iv) proceedings;
- (v) costs;
- (vi) charges; and
- (vii) expenses

whatsoever for same.

(7) For the purpose of the Contract paragraph (i) to sub-clause (2)(i) and sub clause (4) of this Clause shall not include any injury or damage to persons or property arising out of any incident involving a vehicle supplied by the Contractor for use by the Engineer and occurring when such vehicle is being driven by or is in the charge of the Engineer or any person authorised by him.

**Provision
Relating to
Vehicle Supplied
to Engineer**

22 (1) Without limitation to his liability under any other provision of the Contract prior to the Date for Commencement of the Works or prior to the Contractor commencing the execution of the Works whichever shall be the earlier the Contractor shall take out and maintain the insurances identified in Section 3 to Annex 4.

**Insurance
Generally**

If any named insured makes any claim against any of the Required Insurances in respect of which that party is a named insured:

- (i) the relevant party's rights pursuant to this Agreement shall be unaffected; and
- (ii) if any payment by an insurer is subject to a deductible or excess, the Contractor shall, on demand, make payment to the relevant named insured of an amount equivalent to that excess or deductible.

The Contractor shall not be obliged to procure that insurance is put in place or maintained in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act or omission of the Contractor or any Contractor Party.

If a risk usually covered by the insurances specified in Section 3 to Annex 4 becomes Uninsurable then the Contractor shall notify the [Employer / Engineer] within 2 Business Days of the risk becoming Uninsurable and shall propose (and, at the Employer's request, procure) such insurance as is available in respect of that risk for acceptance by the Employer.

(2) Such insurance shall be effected with insurers and in terms approved by the Employer (which approval shall not be unreasonably withheld).

**Insurance
effected with
approved terms**

- (3) The Contractor shall not and shall procure that each sub-contractor of any tier of the Contractor, and any person in connection with the Design, construction, completion and maintenance of the Works at the express or implied invitation of the Contractor or any sub-contractor thereof shall not take any action or fail to take any action (including failure to disclose any fact) or permit anything to be done or not to be done that would entitle any insurer to:

Contractor's responsibilities to disclose facts

- (1) refuse to pay any claim under any of the Required Insurances;
- (2) delay payment of any claim under any of the Required Insurances; or
- (3) render any sum paid out under any of the Required Insurances repayable in whole or in part.

- 23** (1) Subject to the other provisions of this Clause 23, the Contractor shall if requested by the Engineer provide within 7 days of such request copies of all information given to insurers at any time during the placement, alteration or currency of any insurance policy.

Insurance Policies and Copies

- (2) The Contractor shall procure and take all steps necessary to ensure that any such information (and any held by third parties acting on behalf of the Contractor) shall be retained for a period of not less than 5 years after the issue of the Maintenance Certificate.

In this respect, the Contractor shall:

- (i) other than the Professional Indemnity insurance where a cover note issued by the insurance broker to the Contractor shall be sufficient evidence of the existence of the insurance, provide to the Engineer all

- (a) insurance policies; or
- (b) brokers' placing slips

suitably stamped initialled and dated by all underwriters and all endorsements and attachments or brokers' placing slip endorsements suitably stamped initialled and dated by all underwriters and amendments and replacements of the same and other relevant documents as requested by the Engineer acting reasonably (or copies of the same certified in a manner that shall be acceptable to the Employer):

- (a) prior to the commencement of any part of the Design or part of the Works for the Contract;
- (b) prior to the expiry of an existing insurance; or
- (c) within 3 days of receiving a written request

together with evidence from the insurer(s) that the premiums payable thereunder shall have been paid to the insurer(s) and that the insurance shall be in full force and effect.

- (ii) provide or take steps and give all necessary instructions to procure the provision of:

- (a) the said policies; or
 - (b) the other documents referred to in this Clause; and
 - (c) such additional evidence of compliance with Clause 19 to 24 as may be required by the Engineer.
- (3) All the insurance required under Section 3 to Annex 4 shall be subject to undertakings from the insurers and the Contractor:
- (i) to notify the Engineer in writing of:
 - (a) any intention or request to amend the terms and conditions of the said insurance; and
 - (b) to obtain confirmation of the acceptance of these amendments from the Employer via the Engineer;
 - (ii) to provide to the Engineer in writing not less than 30 days notice of cancellation or non-renewal of the said insurance;

in the case of non-renewal by the Contractor allow the Employer the opportunity to renew the insurances in accordance with Clauses 22 to 24 inclusive; and

accepting that the insurances shall be subject to Scots Law and the jurisdiction of the Scottish Courts

- 24** (1) Except for the Professional Indemnity insurance requirement all the insurance required under any other provision of the Contract shall be subject to:
- (a) the waiver of all duties of disclosure; and
 - (b) the waiver of any rights of subrogation

in so far as the Employer and their servants and agents and otherwise shall be concerned.

Rights of Subrogation Non-Vitiation, Changes to Policy Provisions, Waiver of Disclosure Obligation and Notice of Cancellation

- (2) Except for the Professional Indemnity insurance requirement all the insurance required under any other provision of the Contract including but not limited to Section 2 to Annex 4 shall be subject to a non-vitiation provision in order that the actions of the Contractor or any other insured shall not prejudice the insurance in so far as the Employer shall be concerned.

Insurance shall be subject to a non-vitiation provision

- 25** (1) If pursuant to Clause 23 the Contractor shall fail to produce when required such satisfactory evidence to the Engineer that there shall be in force any of the insurance required including but not limited to such insurances referred to under:
- (i) Clauses 22 to 24 inclusive;
 - (ii) Annex 4; or
 - (iii) any other provision of the Contract

then the Employer may:

- (i) effect and keep in force any such insurance;
- (ii) secure the renewal of such insurance;

Failure to Provide suitable evidence of Insurance

- (iii) pay any such premium as may be necessary for such purpose; and
- (iv) from time to time deduct any such amount so paid from any monies due or which may become due to the Contractor or recover the same as a debt due to the Employer from the Contractor together with all recovery costs and expenses whatsoever incurred by the Employer their agents, servants and otherwise.

(2) Where the Contractor fails to comply with any condition imposed by any insurance policy taken out pursuant to:

- (i) Clauses 22 to 24 inclusive;
- (ii) Annex 4; and/or
- (iii) any other provision of the Contract

it shall indemnify the Employer against all losses and claims arising from such failure.

Contractor liability to indemnify Employer in event of non compliance

(3) Notwithstanding any other provision of the Contract failure by the Contractor to provide the Engineer with suitable evidence of insurance satisfying the requirements referred to in:

- (i) Clauses 22 to 24 inclusive; and
- (ii) Annex 4; or
- (iii) any other provision of the Contract

shall result in action by the Employer in accordance with the provisions of Clause 63 inclusive.

Action by Employer where Contractor fails to provide insurance

26 (1) The Contractor shall save as provided in Clause 27 give all notices and pay all fees and licences required to be given or paid by any Legislation in relation to the execution of the Works and by the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Design, construction, completion and maintenance of the Works.

Giving of Notices and Payment of Fees

(2) Each Party shall notify the other forthwith of the receipt by it or, in the case of the Contractor, any officer, servant, employee or agent of the Contractor, any sub-contractor of any tier of the Contractor in connection with the Design, construction, completion and maintenance of the Works at the express or implied invitation of the Contractor or any sub-contractor thereof, of:

- (i) any notice, order, requisition or direction (or proposal for a notice, order, requisition or direction to be made or given) affecting the Site and, if so requested by the other Party, shall deliver a copy of such notice, order, requisition or direction to that other Party; and
- (ii) any damage to the Site or any defects imperfections shrinkages or other faults in the construction, completion or maintenance of the Works which could give rise to a duty on the Employer or on any other person having an interest in the Site.

(3) The Contractor shall ascertain and conform in all respects with Legislation together with the provisions of any regulations or rules of any Undertaker or any other company which may be applicable to the performance of the Contractor’s obligations under the Contract and the Design, construction, completion and maintenance of the Works and with such rules and regulations of local and other statutory authority, Undertaker and any other company as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Legislation, regulation or rule and the like. Provided always that:

Contractor to Conform with Statutes, etc.

- (a) the Contractor shall not be required to indemnify the Employer against the consequences of any such breach which is the unavoidable result of complying with the instructions of the Engineer;
- (b) if the instructions of the Engineer shall at any time be found not to be in conformity with any such Legislation, regulation or rule the Engineer shall issue such instructions including the ordering of a variation under Clause 51 as may be necessary to ensure conformity with such Legislation, regulation or rule,
- (c) the Contractor shall be responsible for obtaining any Permission which may be necessary in respect of the Design, construction, completion and maintenance of the Works.

27 (1) For the purpose of this Clause:

New Roads and Street Works Act 1991 and Town and Country Planning (Scotland) Act 1997 – Definitions

- (a) the expression “**The Act**” shall mean and include the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof for the time being in force;
- (b) the expression “**The Planning Act**” shall mean and include the Town and Country Planning (Scotland) Act 1997 and any statutory modification or re-enactment thereof for the time being in force; and
- (c) all other expressions common to The Act and to this Clause shall have the same meaning as that assigned to them by The Act.

(2) The Employer shall before the commencement of the Works notify the Contractor in writing:

Notifications by Employer to Contractor

- (a) whether the Works or any parts thereof (and if so which parts) are Emergency Works (as defined by section 111 of The Act); and
- (b) which (if any) parts of the Works are to be carried out in Controlled Land or in a Prospective public road.

If any duly authorised variation of the Works shall involve the execution thereof in a road or in Controlled Land or in a Prospective public road or are Emergency Works the Employer

shall notify the Contractor in writing accordingly at the time such variation is ordered.

- (3) The Undertaker's Works shall be procured, co-ordinated and managed in accordance with the guidance contained in Advice Note SA10/05 as supplemented by the provisions of this Contract.

**Service of
Notices
by Employer**

The Employer shall have delivered to Undertakers the letters and/or pro forma documents contained within Appendix E to the Employer's Requirements.

Following the Contract Date, the Contractor shall act on the Employer's behalf as the Overseeing Organisation's Agent for the purposes of Advice Note SA10/05 and shall prepare and deliver to Undertakers all further letters and/or pro forma documents as may be required or expedient in connection with the Undertaker's Works with regard to The Act necessary for the Design, construction, completion and maintenance of the Works in order to ensure that such Design, construction, completion and maintenance of the Works shall comply with the Contract and The Act provided always that the Contractor shall not as agent for the Employer place any Orders for materials, plant or labour with any Undertaker or agree the nature or scope of any Undertaker's Works proposed by an Undertaker or agree to any costs or expenses proposed or estimated or claimed by Undertakers in respect of any Undertaker's Works without the prior written consent of the Employer.

Where the Contractor requests such consent in relation to an Undertaker's Works it shall at that time provide to the Employer such information and/or documentation as is specified in the Special Requirements in Relation to Undertaker's Works contained in Annex 1 to these Conditions of Contract. The Employer shall within fourteen days of receipt of both the request and such information and/or documentation advise the Contractor whether or not it consents to the Contractor as agent for the Employer placing such an Order or agreeing the nature, scope or route of the proposed Undertaker's Works or agreeing the costs or expenses proposed, estimated or claimed by the Undertaker, failing which the Employer shall be deemed to have provided its consent.

In the event that the Employer advises the Contractor within fourteen days that it does not consent to the Contractor placing a proposed Order with an Undertaker or agreeing the nature, scope or route of proposed Undertaker's Works or agreeing the proposed, estimated or claimed costs or expenses of Undertaker's Works the Employer shall advise the Contractor of the basis on which it considers the proposed Order, or the nature, scope or route of the proposed Undertaker's Works or the proposed, estimated or claimed costs or expenses is or are unacceptable. On the Contractor submitting a further request or requests for consent in an amended form together with such information and/or documentation as is specified in the Special Requirements in Relation to Undertaker's Works contained in Annex 1 the Employer shall within fourteen days of receipt of each such request and information and/or documentation advise the

Contractor whether or not it gives such consent, failing which the Employer shall be deemed to have provided its consent.

Provided always that where the Employer has timeously advised the Contractor that it does not give such consent the Employer may in its discretion at any time thereafter assume responsibility for negotiating and/or agreeing that matter with the Undertaker.

In consenting, or refusing its consent, to the Contractor agreeing as its agent to any proposed Order, or proposed Undertaker's Works, or proposed, estimated or claimed costs or expenses of Undertaker's Works, or in negotiating and/or agreeing any of those matters with an Undertaker, the Employer shall assume no responsibility for the Design, construction, completion or maintenance of the Works or any Undertaker's Works and shall be deemed to have given no warranty to the Contractor in respect of the Orders, Undertaker's Works or costs or expenses concerned or in relation to the Design, construction, completion or maintenance of the Works or any Undertaker's Works

Following acceptance by the Employer of the Contractor's Submission the Contractor shall in respect of any notice(s) required to be served under The Planning Act for the Design, construction, completion and maintenance of the Works, required in order to ensure that such Design, construction, completion and maintenance of the Works shall comply with the Contract and The Planning Act, request in writing any such notice(s) be issued by the Employer on behalf of the Contractor.

The Contractor shall provide all information necessary for the Employer to consider whether any such notice should be issued. If such a notice is to be issued, then it shall be issued within 14 days of receipt of all such information from the Contractor.

- (4) The Contractor shall in relation to any part of the Works (other than Emergency Works) and subject to the compliance by the Employer with sub-clause (2) of this Clause give not less than 21 days notice in writing to the Employer before:
- (a) commencing any part of the Works in a road (as defined by Section 107(1) of The Act); or
 - (b) commencing any part of the Works in Controlled Land or in a Prospective public road; or
 - (c) commencing in a road or in Controlled Land or in a Prospective public road any part of the Works which is likely to affect the apparatus of any Owing Undertaker (within the meaning of Section 107(4) and (5) of The Act).

Such notice shall state the date on which and the place at which the Contractor intends to commence the execution of the work referred to therein.

- (5) If the Contractor having given any such notice as is required by sub-clause (4) of this Clause shall not commence the part of the Works to which such notice relates within 2 months after the date when such notice is given such notice shall be treated as invalid

**Notices by
Contractor to
Employer**

**Failure to
Commence
Road
Works**

and compliance with the said sub-clause (4) shall be requisite as if such notice had not been given.

- (6) In the event of such a variation of the Works as is referred to in sub-clause (2) of this Clause being ordered by or on behalf of the Employer and resulting in delay in the execution of the Works by reason of the necessity of compliance by the Contractor with sub-clause (4) of this Clause the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52 be paid in accordance with Clause 60 such additional cost as the Engineer shall consider to have been reasonably attributable to such delay.
- Delays
Attributable to
Variations**
- (7)(a) Except as otherwise provided by this Clause where in relation to the carrying out of the Design, construction, completion and maintenance of the Works The Act imposes any requirements or obligations upon the Employer the Contractor shall subject to Clause 49(5) comply with such requirements and obligations and shall (subject as aforesaid) indemnify the Employer against any liability which the Employer may incur in consequence of any failure to comply with the said requirements and obligations.
- Contractor to
Comply with
Other
Obligations
of The Act and
The Planning
Act**
- (b) Except as otherwise provided by this Clause where in relation to the carrying out of the Design, construction, completion and maintenance of the Works The Planning Act imposes any requirements or obligations upon the Employer the Contractor shall comply with such requirements and obligations and shall indemnify the Employer against any liability which the Employer may incur in consequence of any failure to comply with the said requirements and obligations.
- 28** (1) The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of use of any patent rights design trademark or name or other protected rights in respect of any Constructional Plant machine work or material used for or in connection with the Design, construction, completion and maintenance of the Works and from and against all claims demands damages proceedings costs charges and expenses whatsoever in respect thereof or in relation thereto.
- Patent Rights**
- (2) Except where otherwise specified the Contractor shall pay all tonnage and other royalties rent and other payments or compensation (if any) for getting stone gravel clay or other material required for the Works.
- Royalties**
- 29** (1) All operations necessary for the execution of the Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to or use or occupation of public or private roads and foot-paths or to or of properties whether in the possession of the Employer or any other person and the Contractor shall save harmless and indemnify the
- Interference
with
Traffic and
Adjoining
Properties**

Employer in respect of all claims demands proceedings damages costs charges and expenses whatsoever arising out of or in relation to any such matters.

- (2) All work shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims demands proceedings damages costs charges and expenses whatsoever in regard or in relation to such liability. **Noise and Disturbance**
- (3) Subject and without prejudice to any other provision of the Contract the Contractor shall take all necessary precautions in connection with any underground water resources (including percolating water) rivers streams waterways drains watercourses lakes ditches reservoirs and the like to prevent: **Pollution**
- (i) any interference with the supply to or abstraction from such sources;
- (ii) silting;
- (iii) erosion of their beds or banks;
- (iv) pollution of the water so as to affect adversely the quality or appearance thereof or cause injury or death to animal aquatic or plant life.
- (4) The Contractor shall take all necessary measures to prevent damage loss injury or nuisance caused by mud dirt stones or other material used or generated whilst carrying out the Works. This shall include but not be limited to ensuring that no fuel or lubricant mud dirt stones or other material is spilled or deposited on the roads whether or not they are open to traffic. **Measures for Mud Dirt Stones etc.**
- (5) The Contractor shall take all necessary measures to prevent damage loss injury or nuisance caused by smoke or dust generated whilst carrying out the Works. **Measures for Smoke and Dust**
- 30** (1) The Contractor shall use every reasonable means to prevent any of the public roads or bridges communicating with or on the routes to the Site from being subjected to extraordinary traffic within the meaning of Section 96 of the Roads (Scotland) Act 1984 or any statutory modification or re-enactment thereof by any traffic of the Contractor or any of his sub-contractors and in particular shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of Constructional Plant and material or manufactured or fabricated articles from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such public roads and bridges. **Avoidance of Damage to Roads etc.**
- (2) Save insofar as the Contract otherwise provides the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any public road communicating with the Site to facilitate the movement of **Transport of Constructional Plant**

Constructional Plant equipment or Temporary Works required in the execution of the Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any public road or bridge communicating with the Site caused by such movement including such claims as may be made by any competent authority directly against the Employer pursuant to any Legislation and shall negotiate and pay all claims arising solely out of such damage.

- (3) If notwithstanding sub-clause (1) of this Clause any damage shall occur to any public road or bridge communicating with the Site arising from the transport of materials or manufactured or fabricated articles in the execution of the Works the Contractor shall notify the Engineer as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any Legislation the haulier of such materials or manufactured or fabricated articles is required to indemnify the roads authority against damage the Employer shall not be liable for any costs charges or expenses in respect hereof or in relation thereto. In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims demands proceedings damages costs charges and expenses in relation thereto. Provided always that if so far as any such claim or part thereof shall in the opinion of the Engineer be due to any failure on the part of the Contractor to observe and perform his obligations under sub-clause (1) of this Clause then the amount certified by the Engineer to be due to such failure shall be paid by the Contractor to the Employer or deducted from any sum due or which may become due to the Contractor.

Transport of Materials

- (4) Without prejudice to the foregoing provisions of this Clause the Contractor his sub-contractors and suppliers shall comply with the requirements given in the Contract for the routeing of their vehicles (The Employer does not in specifying requirements warrant in any way that the route(s) will be available in full or part for the whole or any part of the completion period of the Works). The Contractor shall erect and maintain in good condition signs of a type approved by the Engineer giving effect to these routeing requirements.

Routeing of Vehicles

- 31** (1) Where within the Contract there shall be an Indicative Schedule of Undertaker's Works or indicative drawings in respect of such Undertaker's Works in connection with the Design, construction completion and maintenance of the Works, then notwithstanding such Indicative Schedule of Undertaker's Works or indicative drawings in respect of such Undertaker's Works:
- (i) The Contractor shall consult, and comply with the requirements of, such Undertakers in order that the Contractor carries out the Design, construction, completion and maintenance of the Works in accordance with such Undertakers' requirements and the Contractor shall arrange for the procurement, construction and completion of all

Employment of Undertakers

Undertaker's Works necessary for the Design, construction, completion and maintenance of the Works.

In such circumstances, the Contractor shall act on the Employer's behalf as the Overseeing Organisation's Agent within the meaning of Advice Note SA10/05.

The obligations of the Contractor acting as the Overseeing Organisation's Agent shall apply regardless of whether or not:

- (a) the Undertaker's Works are within the Land Made Available; or,
 - (b) notices to Undertakers have been served, or letters or pro forma documents have been delivered, by or on behalf of the Employer under the NRSWA or Advice Note SA10/05 or under the Town and Country Planning (Scotland) Act 1997; and
- (ii) the Contractor shall provide to the Employer all necessary details of Undertaker's Works undertaken to permit the Employer to reimburse to the Undertakers such costs properly incurred by the Undertakers for such Undertaker's Works supplied by them in connection with the Contract provided always that the Employer shall not be responsible for the costs of any Undertaker's Works not specifically identified in Appendix 1/16 of the Specification as included within the Contractor's Submission or any temporary diversions and the Contractor shall meet the costs of any temporary diversions unless the relevant temporary diversions are specifically identified in Appendix 1/16 of the Specification as included within the Contractor's Submission; and
- (iii) the Contractor shall in accordance with good industry practice manage the co-ordination of the Undertaker's Works and the Design, construction completion and maintenance of the Works; and

Subject to any other provision of the Contract, all costs of whatsoever nature that shall be incurred by the Contractor in respect of any consultation and compliance with the requirements of the Undertakers shall be borne by the Contractor including but not limited to any other costs in relation to the Design, construction completion and maintenance of the Works.

(2) The Employer may:

- (i) employ any other contractors and their workmen or his own workmen; or
- (ii) instruct or allow any Undertaker

to execute on or near the Site any further works in connection with or ancillary to the Works and the Contractor shall bear the cost of

Employment by Employer of other contractors, his own Workmen and Undertakers

providing all reasonable facilities required by such contractors, workmen and Undertakers.

(3) Notwithstanding anything contained within the Contract:

**Contractor's
Risks**

- (i) the Contractor shall be liable for all costs resulting from any delays and any disruption to the Design, construction completion and maintenance of the Works as a consequence of or in connection with the employment or procurement of employment of contractors, workmen and Undertakers or the consultation and compliance with the requirements of Undertakers and any other costs in relation to the Design, construction completion and maintenance of the Works all as described within sub-clauses (1) and (2) of this Clause;
- (ii) in the event that such delays and disruption to the Works occur as a consequence of or in connection with the employment or procurement of employment of contractors, workmen or any Undertaker's Works or any further works undertaken by Undertakers all as described within sub-clauses (1) and (2) of this Clause then the Engineer shall take such circumstances described within this sub-clause (3) into account in determining any extension of time determined by the Engineer which shall be for the sole purpose of relieving the Contractor for payment to the Employer of Liquidated Damages for Delay pursuant to Clause 47 due to such circumstances;
- (iii) the Contractor shall be liable and shall bear all costs of whatsoever nature in connection with the:
 - (a) provision;
 - (b) maintenance;
 - (c) replacement
 - (d) procurement; and
 the like of Private Apparatus Works.

The Contractor shall be deemed to have allowed in the Contractor's Submission for all risks of compliance with this sub-clause (3) and otherwise than as described within this sub-clause (3) he shall not be entitled to any extra payment or extension of time for carrying out the Design, construction completion and maintenance of the Works in respect of any matter arising from such compliance.

- 32** All fossils coins articles of value or antiquity and structures or other remains or things of geological or archaeological interest discovered on the Site shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer of such discovery and carry out at the expense of the Employer the Engineer's orders as to the disposal of the same. **Fossils, etc.**
- 33** On the completion of any Section or on the completion of the whole of the Works the Contractor shall clear away and remove from the **Clearance of Site on**

Site all Constructional Plant surplus material rubbish and Temporary Works of every kind and leave the whole of the Site and Permanent Works clean and in a workmanlike condition to the satisfaction of the Engineer. **Completion**

LABOUR

- 34** (1) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of any Legislation including the Sex Discrimination Act 1976 and the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. **Sexual and Racial Discrimination**
- (2) The Contractor shall take all reasonable steps to secure the observance of the provisions of sub-clause (1) of this Clause by all servants employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract. **Steps by Contractor**
- 35** The Contractor shall if required by the Engineer deliver to the Engineer or at his office a return in such form and at such interval as the Engineer may prescribe showing in detail the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Constructional Plant as the Engineer may require. The Contractor shall require his sub-contractors to observe the provisions of this Clause. **Returns of Labour and Plant**

WORKMANSHIP AND MATERIALS

- 36** (1) (a) Subject to the other requirements of the Contract the Contractor shall institute maintain and operate for the term of the Contract a Quality Management System complying with the requirements of: **Quality Management System**
- (i) BS EN ISO 9001
 - (ii) BS EN ISO 14001;
 - (iii) OHSAS 18001; and
 - (iv) any other provision of the Contract;
- for the purpose of ensuring and demonstrating that all aspects of the Design, construction, completion and maintenance of the Works and all other matters for which the Contractor is responsible under the Contract shall be carried out in conformity with any other relevant provision of the Contract.

- (b) The Contractor shall not commence or permit the commencement of any aspect of the Design, construction, completion and maintenance of the Works or any other matters for which the Contractor shall be responsible under the Contract before those parts of the Quality Management System and Quality Plan which concern such parts of the Design, construction, completion and maintenance of the Works or such other matters have been approved in writing by the Engineer.
- (c) Notwithstanding any other provision of the Contract the Quality Management System shall inter alia define
- (c) The roles and functions of:
- a) the Contractor (including the members of the Contractor's Site Personnel and all other key personnel associated with the execution of the Design, construction, completion and maintenance of the Works);
 - b) the Employer;
 - c) the Designer(s);
 - d) the Checker(s);
 - e) the Road Safety Auditor;
 - f) all other sub-contractors and relevant third parties.
- (d) the execution of the Design, construction, completion and maintenance of the Works and any other matters for which the Contractor shall be responsible under the terms of the Contract including inter alia the execution of the independent check of the Design, the execution of the Road Safety Audit and receipt of variations and instructions and the supervision and maintenance of the Works;
- (e) the provision of records tracing the origin and location in the Site of everything incorporated in the Works;
- (f) the provision of documented evidence that the Contractor has discharged its obligations under the Contract for everything for which payment under the Contract is claimed by the Contractor;
- (g) the provision of evidence that the Contractor has searched for identified and corrected all defects and non conformances with its obligations under the Contract that are the responsibility of the Contractor under the terms of the Contract;

- (h) the provision of all hold points as shall be required by the terms of the Contract including without prejudice to the generality of the foregoing each and every Contractor's Hold Point, Engineer's Hold Point, Contractor's Witness Point and Engineer's Witness Point. (For the avoidance of doubt such Contractor's Hold Points and Contractor's Witness Points shall include such for the Designer and other key personnel employed by the Contractor); and
 - (i) the provision of all procedures and method statements and the like required by the Contract. Notwithstanding any other provision of the Contract the Contractor shall carry out risk assessments and record the results and subsequent actions arising therefrom in respect of method statements and the like.
- (d) The Contractor shall make a condition in each and every sub-contract and order for goods and services including Design services whereby sub-contractors and suppliers shall institute maintain and operate for the term of the Contract a Quality Management System complying with the requirements of:
- (i) BS EN ISO 9001
 - (ii) BS EN ISO 14001;
 - (iii) OHSAS 18001; and
 - (iv) any other provision of the Contract;
- for the purpose of ensuring and demonstrating the services or goods provided conform with any other relevant provision of the Contract. A condition shall also be made within each and every sub-contract to provide for the Engineer access and facilities of a standard sufficient to enable him to take such actions as he may consider necessary under this Clause 36.
- (e) Subject to the other requirements of the Contract the Contractor shall within 21 days of the Contract Date submit to the Engineer for his written approval his Quality Management System and Quality Plan.
- (f) The Contractor shall comply with the Quality Management System and Quality Plan referred to in this Clause 36 and the Contract and shall ensure that:
- (i) the Designer complies with the Quality Management System and Quality Plan in respect of carrying out the Design and the supervision of the Works;
 - (ii) the Checker complies with the Quality Management System and Quality Plan in respect of carrying out the check of the Design;

- (iii) the Road Safety Auditor complies with the Quality Management System and Quality Plan in respect of carrying out the Road Safety Audits; and
 - (iv) the Contractor's other sub-contractors and suppliers comply with the Quality Management System and Quality Plan.
- (g) Where the Quality Management System or Quality Plan refers to or relies on or incorporates any quality manual or procedure and the like (including method statements) then such quality manual or procedure (including method statements) or the relevant parts thereof shall be submitted to the Engineer for approval at the time that the Quality Management System or the Quality Plan or part of or change to the Quality Management System or the Quality Plan is submitted in accordance with this Clause 36 and the Contract and the contents of such quality manual or procedure and the like (including method statements) shall be taken into account in the consideration of the Quality Management System or the Quality Plan or part of or change to the Quality Management System or the Quality Plan in accordance with this Clause 36. The Employer may require the amendment of any such quality manual or procedure and the like (including method statements) to the extent necessary to enable the Quality Management System or the Quality Plan to satisfy the Employer's Requirements and any other provision of the Contract.
- (h) The Contractor shall from time to time as circumstances change from that considered when the Quality Management System or the Quality Plan was originally produced submit to the Engineer for approval any changes to the Quality Management System or the Quality Plan to continue to comply with any other provision of the Contract.
- (i) The Contractor shall employ for the duration of the Contract a Contract Quality Manager who shall be independent of the Contractor's management team. The Contract Quality Manager shall require to be approved by the Engineer. Without limitation to the foregoing the Contract Quality Manager shall be required to:
 - (i) ensure the effective institution maintenance and operation of the Quality Management System and the Quality Plan;
 - (ii) audit the Quality Management System and the Quality System at regular intervals and report the findings of such audit to the Engineer;
 - (iii) review the Quality Management System and Quality Plan at intervals to ensure their continued suitability and effectiveness; and

-
- (iv) liaise with the Engineer on all matters relating to quality management.
- (j) Without limitation to any other provision of the Contract where required by the Employer a Quality Authority appointed by the Employer may carry out audits of the Quality Management System (including without limitation the Quality Plan and any quality manuals and procedures and the like (including method statements)) at approximate intervals of 3 months and may carry out periodic monitoring, spot checks and auditing of the Quality Management System and the Quality Plan.
- (k) Where the Contractor's Quality Management System contains a Contractor's Hold Point, the Contractor's Hold Point shall only be released following the creation of an appropriate written record that all work up to the Contractor's Hold Point has been demonstrated under the Contractor's Quality System as complying with the requirements of the Contract, which written record shall be signed on behalf of the Contractor, the Checker, the Designer, the Road Safety Auditor and/or the Engineer as appropriate. Where the Contractor's Quality Management System contains an Engineer's Hold Point, the Engineer's Hold Point shall only be released following the creation of an appropriate written record that all Contract requirements up to the Engineer's Hold Point have been demonstrated under the Contractor's Quality System as having been complied with, which written record shall be signed on behalf of the Contractor, the Checker, the Designer, the Road Safety Auditor and/or the Engineer as appropriate.
- (l) If in the opinion of the Engineer the Contractor shall fail to satisfactorily undertake all or any of the obligations described in this Clause 36 the Engineer shall so notify the Contractor in writing. If the Contractor does not in the opinion of the Engineer take reasonable steps within a reasonable period to rectify such failure the Engineer may thereupon make such arrangements and incur such costs as he may consider reasonable in all the circumstances for rectifying such failure of the Contractor and for securing that the requirements of the Contract in such respect are met. Such action by the Engineer shall not entitle the Contractor to any extra payment or to any extension of time for completion of the Works and the Contractor shall be liable for such actions of the Engineer under this sub-clause as though for such purpose the Contractor had taken such actions himself. The amounts of any costs and expenses incurred by the Employer or by the Engineer on behalf of the Employer under this sub-clause including any relevant fees costs and expenses charged to the Employer by the Engineer in respect of his actions under this sub-clause shall be particularised and notified to the Employer and the Contractor by the Engineer and such amounts shall be recoverable as sums of money due pursuant to the provisions of Clause 74 hereof. Provided always that the amounts of such costs and the grounds for incurring them are reasonable

- (i) For the purposes of this Clause 36 the Engineer shall be entitled to act as though he were the Purchaser's Representative for the purposes of:
- a) BS EN ISO 9001
 - b) BS EN ISO 14001;
 - c) OHSAS 18001; and
 - d) any other provision of the Contract.
- (ii) For the purposes of this Clause 36 the Engineer shall in respect of the Contractor's default as described therein be entitled to act as though he were the Contractor.
- (2) (a) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Employer's Requirements or the Engineer's Instructions and shall be subjected to the samples and tests required or reasonably implied by the terms of the Contract and set out in the method statements, or which may be ordered by the Engineer.
- (b) Except as may be provided otherwise by the Contract every sample and test required by the Contract shall be undertaken in a laboratory holding accreditation granted in respect of such test by the United Kingdom Accreditation Service (UKAS) or by the European Co-operation for Accreditation of Laboratories (EAL).
- (c) Unless provided for elsewhere within the Contract the Contractor shall provide a Schedule of Tests and Inspections within 21 days of the Contract Date. Inspection Check Sheets shall be provided under the Contractor's Quality Plan and shall be supplied to the Engineer prior to commencement of the operation concerned.
- (d) If the Engineer considers it necessary in his opinion to undertake any tests under his own direction independently of the Contractor the Contractor shall provide such assistance instruments machines labour and materials as are normally required for examining measuring and testing any work and the quality weight or quantity of any materials used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.
- (3) The Contractor at his own cost shall supply all samples.
- (4) The cost of making a test shall be borne by the Contractor if such test is clearly called for to provide evidence of conformance to the Contract including tests under load or tests to ascertain whether the Design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil. If any test is ordered by the Engineer in accordance with this Clause 36 which was not so intended or provided for or is undertaken by the Engineer in accordance with this Clause 36 then the cost of such

**Quality of
Materials and
Workmanship,
Samples and
Tests**

Cost of Samples

Cost of Tests

- test shall be borne by the Contractor if the test shows the workmanship or materials not to be in accordance with either:
- (a) the provision of the Contract, or
 - (b) Engineer's instructions;
- but otherwise by the Employer.
- (5) Notwithstanding any other provision of this Clause the Contractor shall provide to the Engineer or the Employer such information as the Engineer or the Employer may reasonably require to demonstrate the Contractor's compliance with this Clause 36. **Provision of Information**
- (6) Nothing contained in this Clause 36 shall relieve the Contractor of any of his responsibilities under the Contract. **Contractor's Responsibilities**
- 37** The Engineer and any person authorised by him shall at all times have access to the Design, construction, completion and maintenance of the Works and to the Site and to all workshops and places where work is being prepared or whence materials manufactured articles and machinery are being obtained for the Design, construction, completion and maintenance of the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access. **Access to Site**
- 38** (1) The Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. No such work shall be covered up or put out of view without the Engineer being given such opportunity to examine and measure same. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay unless he considers it unnecessary and advises the Contractor accordingly attend for the purpose of examining and measuring such work or of examining such foundations. **Examination of Work before Covering up**
- (2) The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of sub-clause (1) of this Clause and are found to be executed in accordance with the Contract the cost of uncovering making openings in or through reinstating and making good the same shall be borne by the Employer but in any other case all such cost shall be borne by the Contractor. **Uncovering and Making Openings**
- 39** (1) The Engineer shall during the progress of the Works have power to order in writing: **Removal of Improper Work and Materials**
- (a) the removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract;

- (b) the substitution of proper and suitable materials; and
- (c) the removal and proper re-execution (notwithstanding any previous test thereof or interim payment thereof) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

(2) In case of default on the part of the Contractor in carrying out such order the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be borne by the Contractor and shall be recoverable from him by the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.

Default of Contractor in Compliance

(3) Failure of the Engineer or any person acting under him pursuant to Clause 2 to disapprove any work or materials shall not prejudice the power of the Engineer or any of them subsequently to disapprove such work or materials.

Failure to Disapprove

40

(1) The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer. Subject to Clause 52(1) the Contractor shall be paid in accordance with Clause 60 the extra cost (if any) incurred in giving effect to the Engineer's instructions under this Clause except to the extent that such suspension is:

Suspension of Work

- (a) otherwise provided for in the Contract; or
- (b) necessary by reasons of weather conditions or by some default on the part of the Contractor; or
- (c) necessary for the proper execution of the work or for the safety of the Works or any part thereof inasmuch as such necessity does not arise from any act or default of the Engineer or the Employer or from any of the Excepted Risks defined in Clause 20.

The Engineer shall take any delay occasioned by a suspension ordered under this Clause (including that arising from any act or default of the Engineer or the Employer) into account in determining any extension of time to which the Contractor is entitled under Clause 44 except when such suspension is otherwise provided for in the Contract or is necessary by reason of some default on the part of the Contractor.

(2) If the progress of the Works or any part thereof is suspended on the written order of the Engineer and if permission to resume work is not given by the Engineer within a period of 3 months from the date of suspension then the Contractor may unless such suspension is otherwise provided for in the Contract or continues

Suspension lasting more than Three Months

to be necessary by reason of some default on the part of the Contractor serve a written notice on the Engineer requiring permission within 28 days from the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If within the said 28 days the Engineer does not grant such permission the Contractor by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 51 or where it affects the whole Works as an abandonment of the Contract by the Employer.

COMMENCEMENT TIME AND DELAYS

- 41** Subject to any other provision of the Contract, the Contractor shall commence the Design, construction, completion and maintenance of the Works on or after the Date for Commencement of the Works. Thereafter the Contractor shall proceed with the Design, construction, completion and maintenance of the Works with due expedition and without delay in accordance with the Contract. **Commencement Of Design and Works**
- 42** (1) Subject to sub-clause (3) of this Clause and save in so far as the Contract may prescribe the extent of portions of the Land Made Available by the Employer for the Works of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed including the mitigation and security measures to be carried out by the Contractor as specified in sub-clauses 18(1) to 18(6) inclusive the Employer shall, subject to any other provision of the Contract, at the Date for Commencement of the Works identified under Clause 41 give to the Contractor possession of so much of the Land Made Available by the Employer for the Works as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the Contractor's Programme including the mitigations and security measures and the like identified in sub-clauses 18(1) to 18(6) inclusive. The Employer will from time to time as the Works proceed give to the Contractor possession of such further portions of the Land Made Available by the Employer for the Works as may be required to enable the Contractor to proceed with the construction of the Works with due despatch in accordance with the Contractor's Programme. Subject to any other provision of the Contract, if the Contractor suffers delay or incurs cost from failure on the part of the Employer to give possession in accordance with the terms of this Clause then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 and the Contractor shall subject to Clause 52(1) be paid in accordance with Clause 60 the amount of such cost as may be reasonable. **Possession of Land Made Available by the Employer for the Works**
- (2) The Contractor shall bear all expenses and charges for any special or temporary servitudes and the like or any wayleaves and the like required by him in connection with access to the Site and in connection with the carrying out of the Design, **Wayleaves, etc.**

construction, completion and maintenance of the Works. The Contractor shall also provide at his own cost anything outside the Site required by him for the purposes of the Design, construction, completion and maintenance of the Works.

(3) Nothing in sub-clause (1) of this Clause shall apply to any parts of the Works or any operations in connection with the Contract situated on or under or over or through any land owned or occupied by or otherwise under the control of British Railways Board or their successors. Access to any such land will be at the discretion of British Railways Board or their successors and the Contractor shall be deemed to have included all risks under this sub-clause in his Final Tender. **Access to British Railways Board Land**

(4) At the Contract Date the Contractor shall enter into a lease with the Scottish Ministers of the Land Made Available by the Employer for the Works in the form of the agreed form lease forming Annex 5 to these Conditions of Contract. **Lease**

43 The whole of the Works (including any Deemed Variation or any Grouting Works or any Planting Works or any other Works resulting from such Deemed Variation or Grouting Works) and any Section required to be completed within a particular time as stated in Appendix A to Form of Final Tender shall be completed within the time so stated (or such extended time as may be allowed under Clause 44) calculated from the Date for Commencement of the Works. The Contractor shall use his best endeavours to prevent and where it occurs to mitigate any delay to the progress of the Works or any Section. **Time for Completion**

44 (1) Should the Contractor consider that: **Extension of Time for Completion**

- (a) any variation ordered under Clause 51(1) or
- (b) any cause of delay referred to in sub-clauses 14(5), 18(8), 27(6), 40(1) and 42(1) or
- (c) Exceptionally Adverse Weather or
- (d) any delay impediment prevention or default by the Employer or
- (e) loss or damage occasioned by any one or more of the Excepted Risks as defined by clause 20(2)

be such as to entitle the Contractor to an extension of time for the substantial completion of the Works or (where different periods for completion of different Sections are provided for in Appendix A to the Form of Final Tender) any relevant Section the Contractor shall within 28 days after the cause of the delay has arisen or as soon thereafter as is reasonable deliver to the Engineer full and detailed particulars in justification of the period of extension claimed in order that the claim may be investigated at the time.

Notwithstanding the earlier provisions of this Clause 44(1) any Deemed Variation or Grouting Works or Planting Works or any

other Design and Works resulting from such Deemed Variation shall not entitle the Contractor to an extension of time for the substantial completion of the Works or (where different periods for completion of different Sections are provided for in Appendix A to the Form of Final Tender) of the relevant Section.

(2) The Engineer shall upon receipt of such particulars or if he thinks fit in the absence of any such claim consider all the circumstances known to him at that time and make an assessment of the extension of time (if any) to which he considers the Contractor entitled for the completion of the Works or relevant Section and shall by notice in writing to the Contractor and the Employer grant such extension of time for completion. In the event that the Contractor shall have made a claim for an extension of time but the Engineer considers the Contractor not entitled thereto the Engineer shall so notify the Employer and the Contractor in writing.

**Interim
Assessment of
Extension**

(3) The Engineer shall at or as soon as possible after the due date or extended date for completion (and whether or not the Contractor shall have made any claim for an extension of time) consider all the circumstances known to him at that time and take action similar to that provided for in sub-clause (2) of this Clause. Should the Engineer consider that the Contractor is not entitled to an extension of time he shall so notify the Employer and the Contractor in writing.

**Assessment at
Due Date for
Completion**

(4) The Engineer shall upon the issue of the Certificate of Completion of the Works or of the relevant Section review all the circumstances of the kind referred to in sub-clause (1) of this Clause and shall finally determine and certify to the Contractor with a copy to the Employer the overall extension of time (if any) to which he considers the Contractor entitled in respect of the Works or any relevant Section. No such final review of the circumstances shall result in a decrease in any extension of time already granted by the Engineer pursuant to sub-clauses (2) or (3) of this Clause.

**Final
Determination of
Extension**

(5) Notwithstanding the generality of the foregoing, the Engineer shall, in assessing any delay or extension of time for the purposes of this clause 44 not take into account any event or cause of delay which is in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Contractor, his servants or agents or any sub-contractor or supplier or their respective servants or agents.

45 Subject to any provision to the contrary contained in the Contract none of the Works shall be executed during the night or on Sundays without the permission in writing of the Engineer save when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer or the Engineer's Representative. Provided always that this Clause shall not be applicable in the case of any work, which it is customary to carry out outside normal working hours or by rotary or double shifts.

**Night and
Sunday
Work**

46 If for any reason which does not entitle the Contractor to an extension of time the rate of progress of the Design or the Works or any Section is at any time in the opinion of the Engineer too slow to ensure completion of the Works in accordance with the Contractor’s Programme (as modified from time to time) by the prescribed time or extended time for completion of the Works or a Section of the Works the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary to expedite progress so as to complete the Works or such Section by the prescribed time or extended time for completion of the Works or a Section of the Works. The Contractor shall not be entitled to any additional payment for taking such steps. If as a result of any notice given by the Engineer under this Clause the Contractor shall seek the Engineer’s permission to do any work at night or on Sundays such permission shall not be unreasonably refused.

Rate of Progress

LIQUIDATED DAMAGES AND LIMITATION OF DAMAGES FOR DELAYED COMPLETION

47 (1) (a) In Appendix A to Form of Final Tender under the heading “Liquidated Damages for Delay” there is stated in column 1 the sum which represents the Employer’s genuine pre-estimate (expressed as a rate per week or per day as the case may be) of the damages likely to be suffered by him in the event that the whole of the Works shall not be completed within the time prescribed by Clause 43. Provided that in lieu of such sum there may be stated such lesser sum as represents the limit of the Contractor’s liability for damages for failure to complete the whole of the Works within the time for completion therefor or any extension thereof granted under Clause 44.

Liquidated Damages for Whole of Works

(b) If the Contractor should fail to complete the whole of the Works within the prescribed time or any extension thereof granted under Clause 44 the Contractor shall pay to the Employer for such default the sum stated in column 1 aforesaid for every week or day as the case may be which shall elapse between the date on which the prescribed time or any extension thereof expired and the date of completion of the whole of the Works. Provided that if any part of the Works not being a Section or part of a Section shall be certified as complete pursuant to Clause 48 before completion of the whole of the Works the sum stated in column 1 shall be reduced by the proportion which the value of the part completed bears to the value of the whole of the Works.

(2) (a) In cases where any Section shall be required to be completed within a particular time as stated in Appendix A to Form of Final Tender there shall also be stated in the said Appendix under the heading “Liquidated Damages for Delay” in column 2 the sum by which the damages stated in column 1 or the limit of the Contractor’s said liability as the case may be shall be reduced upon completion of each such Section and in column 3 the sum which represents the Employer’s genuine pre-estimate (expressed as aforesaid) of any specific damage

Liquidated Damages for Section

likely to be suffered by him in the event that such Section shall not be completed within that time. Provided that there may be stated in column 3 in lieu of such sum such lesser sum as represents the limit of the Contractor's liability for failure to complete the relevant Section within the relevant time.

- (b) If the Contractor should fail to complete any Section within the relevant time for completion or any extension thereof granted under Clause 44 the Contractor shall pay to the Employer for such default the sum stated in column 3 aforesaid for every week or day as the case may be which shall elapse between the date on which the relevant time or any extension thereof expired and the date of completion of the relevant Section. Liquidated damages in respect of two or more Sections may where circumstances so dictate run concurrently. Provided that:
- (i) If completion of a Section shall be delayed beyond the due date for completion of the whole of the Works the damages payable under sub-clauses (1) and (2) of this Clause until completion of that Section shall be the sum stated in column 1 plus in respect of that Section the sum stated in column 3 less the sum stated in column 2;
- (ii) if any part of a Section shall be certified as complete pursuant to Clause 48 before completion of the whole thereof the sums stated in columns 2 and 3 in respect of that Section shall be reduced by the proportion which the value of the part bears to the value of the Section and the sum stated in column 1 shall be reduced by the same amount as the sum in column 2 is reduced; and
- (iii) upon completion of any such Section the sum stated in column 1 shall be reduced by the sum stated in column 2 in respect of that Section at the date of such completion.
- (3) All sums payable by the Contractor to the Employer pursuant to this Clause shall be paid as liquidated damages for delay and not as a penalty and shall be recoverable by the Employer from the Contractor as a debt. **Damages not a Penalty**
- (4) If the Engineer shall under Clause 44(3) or (4) have determined and certified any extension of time to which he considers the Contractor entitled or shall have notified the Employer and the Contractor that he is of the opinion that the Contractor is not entitled to any or any further extension of time the Employer may (subject to the issue of a suitable Pay Less Notice) deduct and retain from any sum otherwise payable by the Employer to the Contractor hereunder the amount which in the event that the Engineer's said opinion should not be subsequently revised would be the amount of the liquidated damages payable by the Contractor under this Clause. **Deduction of Liquidated Damages**
- (5) If upon a subsequent or final review of the circumstances causing delay the Engineer shall grant an extension or further extension of time or if an arbiter appointed under Clause 66 shall decide that **Reimbursement of Liquidated Damages**

the Engineer should have granted such an extension or further extension of time the Employer shall no longer be entitled to liquidated damages in respect of the period of such extension of time. Any sums in respect of such period which may have been recovered pursuant to sub-clause (3) or deducted or retained under sub-clause (4) of this Clause shall be reimbursable forthwith to the Contractor together with interest at the rate provided for in Clause 60(7) from the date on which such liquidated damages were recovered from the Contractor.

COMPLETION CERTIFICATE

- 48** (1) When the Contractor shall consider that the whole of the Works has been substantially completed, has satisfactorily passed any final test that may be prescribed by the Contract and the Contractor has provided to the Engineer all the relevant As Constructed Requirements as identified in Section 7 of the Employer's Requirements he may give a notice to that effect to the Engineer or to the Engineer's Representative accompanied by an undertaking to finish any outstanding part of the Works during the first Relevant Fifty Two Week Period as defined in Clause 49(1)(b) prior to the first anniversary of the date of commencement of the Period of Maintenance. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor for the Engineer to issue a Certificate of Completion in respect of the Works and the Engineer shall within 21 days of the date of delivery of such notice either issue to the Contractor (with a copy to the Employer) a Certificate of Completion stating the date on which in his opinion the Works were substantially completed in accordance with the Contract or else give instructions in writing to the Contractor specifying all the parts of the Works which in the Engineer's opinion requires to be done by the Contractor before the issue of such certificate. If the Engineer shall give such instructions the Contractor shall be entitled to receive such Certificate of Completion within 21 days of completion to the satisfaction of the Engineer of the parts of the Works specified by the said instructions.
- Certificate of Completion of Works**
- (2) Similarly in accordance with the procedure identified in sub-clause (1) of this Clause the Contractor may request and the Engineer shall issue a Certificate of Completion in respect of:
- Completion of Sections and Occupied Parts**
- (a) any Section in respect of which a separate time for completion is provided in Appendix A to Form of Final Tender; and
- (b) any substantial part of the Works, which has been both completed to the satisfaction of the Engineer and occupied or used by the Employer.
- (3) If the Engineer shall be of the opinion that any part of the Works shall have been substantially completed, shall have satisfactorily passed any final test that may be prescribed by the Contract and the Contractor has provided to the Engineer all the relevant As Constructed Requirements as set out in Section 7 of the Employer's Requirements he may issue a Certificate of Completion in respect of that part of the Works before completion
- Completion of Other Parts of Works**

of the whole of the Works and upon the issue of such certificate the Contractor shall be deemed to have undertaken to complete any outstanding part of the Works during the first Relevant Fifty Two Week Period as defined in Clause 49(1)(b) prior to the first anniversary of the date of Commencement of the Period of Maintenance.

- (4) Provided always that a Certificate of Completion given in respect of any Section or part of the Works before completion of the whole shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless such certificate shall expressly so state. **Reinstatement of Ground**

ROUTINE MAINTENANCE, COMPLIANCE SURVEYS, MAINTENANCE AND DEFECTS

- 49 (1) (a) In the Contract the expression “**Period of Maintenance**” shall mean the period of maintenance named in Appendix A to Form of Final Tender calculated from the date of completion of the Works or any Section or part thereof certified by the Engineer in accordance with Clause 48 as the case may be. **Definition of “Period of Maintenance” and “Relevant Fifty Two Week Period”**
- (b) In the Contract the expression “**Relevant Fifty Two Week Period**” shall mean each period of fifty two weeks during each Period of Maintenance which precedes each of the anniversaries of the date of completion of the whole of the Works or any Section or part thereof.
- (2) To the intent that the Works and each Section and part thereof shall at or as soon as practicable after the expiry of the relevant Period of Maintenance be delivered up to the Employer in the condition required by the Contract (fair wear and tear excepted) to the satisfaction of the Engineer the Contractor shall complete all parts of the Works (if any) outstanding at the date of completion as certified under Clause 48 as soon as may be practicable after such date but in any case not later than at the date of expiry of the first Relevant Fifty Two Week Period and shall execute during each Relevant Fifty Two Week Period all work of routine maintenance and compliance surveys as described in the Contract and all work of repair amendment reconstruction rectification and making good of defects imperfections shrinkages or other faults including inter alia such work as aforesaid as may during the Relevant Fifty Two Week Period or within 14 days after its expiry be required of the Contractor by the Engineer as a result of an inspection made by or on behalf of the Engineer prior to its expiry. **Execution of Work of Repair, etc**
- (3) All such work shall be carried out by the Contractor at his own expense if the necessity thereof shall in the opinion of the Engineer be due to the use of materials or workmanship not in accordance with the Contract or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor’s part under the Contract. If in the opinion of the Engineer such necessity shall be due to any other **Cost of Execution of Work of Repair, etc**

cause the value of such work shall be ascertained and paid for as if it were additional work.

- (4) If the Contractor shall fail to do any such work as aforesaid or in the opinion of the Employer unreasonably delay any such work as aforesaid required by the Engineer the Employer shall be entitled to carry out any such work by his own workmen or by other contractors and if such work is work which the Contractor should have carried out at the Contractor's own cost the Employer shall be entitled to recover from the Contractor the cost thereof or may deduct the same from any monies due or that become due to the Contractor.
- (5) If in the course or for the purposes of the execution of the Works or any part thereof any public road or other road or way shall have been broken into then notwithstanding anything herein contained:
- (a) If the permanent reinstatement of such public road or other road or way is to be carried out by the appropriate roads authority or by some person other than the Contractor (or any sub-contractor to him) the Contractor shall at his own cost and independently of any requirement of or notice from the Engineer be responsible for the making good of any subsidence or shrinkage or other defect imperfection or fault in the temporary reinstatement of such public road or other road or way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the end of the Period of Maintenance in respect of the works beneath such public road or other road or way or until the roads authority or other person as aforesaid shall have taken possession of the Site for the purpose of carrying out permanent reinstatement (whichever is the earlier) and shall indemnify and save harmless the Employer against and from any damage or injury to the Employer or to third parties arising out or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto. As from the end of such Period of Maintenance or the taking of possession as aforesaid (whichever shall first happen) the Employer shall indemnify and save harmless the Contractor against and from any damage or injury as aforesaid arising out or in consequence of or in connection with the said permanent reinstatement or any defect imperfection or failure of or in such work of permanent reinstatement and against and from all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto.
- (b) Where the roads authority or other person as aforesaid shall take possession of the Site as aforesaid in sections or lengths the responsibility of the Contractor under paragraph (a) of this sub-clause shall cease in regard to any such section or length at the time possession thereof is so taken but shall during the continuance of the said Period of Maintenance continue in regard to any length of which possession has not been so

**Remedy on
Contractor's
Failure to Carry
out Work
Required**

**Temporary
Reinstatement**

taken and the indemnities given by the Contractor and the Employer respectively under the said paragraph shall be construed and have effect accordingly.

- 50** The Contractor shall if required by the Engineer in writing carry out such searches tests or trials as may be necessary to determine the cause of any defect imperfection or fault under the directions of the Engineer. Unless such defect imperfection or fault shall be one for which the Contractor is liable under the Contract the cost of the work carried out by the Contractor as aforesaid shall be borne by the Employer. But if such defect imperfection or fault shall be one for which the Contractor is liable the cost of the work carried out as aforesaid shall be borne by the Contractor and he shall in such case repair rectify and make good such defect imperfection or fault at his expense in accordance with Clause 49.
- Contractor to Search**

ALTERATIONS ADDITIONS AND OMISSIONS

- 51** (1) The Engineer shall order any variation to any part of the Works that may in his opinion be necessary for the completion of the Works and shall have power to order any variation that for any other reason shall in his opinion be desirable for the satisfactory completion and functioning of the Works. Such variation may include additions omissions substitutions and alterations changes in quality form character kind position dimension level or line and changes in the specified sequence method or timing of construction (if any).
- Ordered Variations and Deemed Variations**

Where during the progress of the Design, construction and completion of the Works the Contractor considers that a variation to the Works should be ordered by the Engineer pursuant to this Clause 51 and where the Engineer has not ordered any such variation the Contractor shall immediately that he becomes aware that any such variation should be ordered, issue a notification to the Engineer requesting the Engineer to order such a variation. Such notification by the Contractor shall include a detailed contractual justification and demonstration such that the Engineer should be able to give consideration to the ordering of such a variation. Where in respect of any such notification the Engineer is of the opinion that such a variation is required the Engineer shall order such variation pursuant to Clause 51(1). Where the Engineer considers that the said notification contains insufficient justification and demonstration to show that a variation should be ordered, he shall be entitled to request from the Contractor and shall be supplied by the Contractor any such further information by way of justification or demonstration as in the opinion of the Engineer is necessary to permit him to consider whether he should order such a variation.

Notwithstanding the earlier provisions of this Clause 51(1) where within the Contract there is a priced Schedule of Rates and Prices for Grouting Works the Contractor shall be obliged to carry out any variation to the Design, construction, completion and maintenance of the Works for any Grouting Works and for any resulting changes to the Design, construction, completion and maintenance

of the Works resulting from such Grouting Works. Such Design and Works during the Design, construction and completion of the Works shall be a "**Deemed Variation**" that shall require the Contractor to proceed with and complete any Design and any Grouting Works (including the requirement to carry out all investigations, tests and the like necessary to establish the requirement for Grouting Works) and any other resulting changes to the Design, construction, completion and maintenance of the Works, without a variation being issued by the Engineer pursuant to the other provisions of this Clause 51. Any Grouting Works carried out by the Contractor during the maintenance of the Works shall not be a Deemed Variation. All such Grouting Works shall be carried out by the Contractor at his own expense and cost.

Where within the Contract there is no priced Schedule of Rates and Prices for Grouting Works the Contractor shall be obliged to carry out any necessary Grouting Works as part of the Design, construction, completion and maintenance of the Works and shall be deemed to have allowed for such in the Final Tender Total.

Any work carried out by the Contractor; or any costs incurred by the Contractor in connection with Protestor Action or the threat of Protestor Action shall not be a Variation or Deemed Variation pursuant to sub-clause 1 of this Clause.

Notwithstanding the earlier provisions of this Clause 51(1) where within the Contract there is a priced Schedule of Rates and Prices for Planting Works the Contractor shall be obliged to carry out any variation to the Design, construction, completion and maintenance of the Works for any Planting Works resulting from any necessary changes to the Indicative Planting Works Conceptual Design. Such Design and Works shall be a "**Deemed Variation**" that shall require the Contractor to proceed with and complete any Design including any Planting Works and any other resulting changes to the Design, construction, completion and maintenance of the Works without a variation being issued by the Engineer pursuant to the other provisions of this Clause 51.

The Contractor shall develop the Design for the Planting Works from the Indicative Landscape Proposals contained in Appendix 0/4 of the Specification. The Contractor shall carry out all such Planting Works as part of the Design, construction, completion and maintenance of the Works. Other than as described elsewhere in the Contract the Contractor shall carry out at his own cost any consequential Design and Works resulting from such Planting Works.

- (2) No such variation (except a Deemed Variation) shall be made by the Contractor without an order by the Engineer. All such orders shall be given in writing provided that if for any reason the Engineer shall find it necessary to give any such order orally in the first instance in respect of ensuring the safety of the:

- (i) Works;
- (ii) Site;

**Ordered
Variations to be
in Writing**

- (iii) Contractor's employees;
- (iv) Engineer's employees;
- (v) public; or
- (vi) damage to any other person or property

the Contractor shall comply with such oral order. Such oral order shall be confirmed in writing by the Engineer as soon as is possible in the circumstances. If the Contractor shall confirm in writing to the Engineer any oral order by the Engineer and such confirmation shall not be contradicted in writing by the Engineer forthwith it shall be deemed to be an order in writing by the Engineer. No variation ordered or deemed to be ordered in writing in accordance with sub-clauses (1) and (2) of this Clause shall in any way vitiate or invalidate the Contract but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

- 52** (1) The value of all variations ordered by the Engineer in accordance with Clause 51 shall be ascertained by the Engineer in accordance with the following principles: **Engineer to fix Value of Variations**
- (a) By the Engineer ordering in writing that any varied work shall be valued on the basis of a lump sum quotation prepared by the Contractor prior to the commencement of the work relating to the ordered variation. Any lump sum quotation submitted by the Contractor in accordance with this Clause shall be submitted to the Engineer not later than 14 days after receipt of such instruction from the Engineer. The quotation shall show inter alia how the lump sum was calculated by showing separately the amounts attributable to:
- (i) the direct cost or reduction in cost of providing the lump sum quotation;
 - (ii) the cost or reduction in cost (if any) of any disruption to or prolongation of varied and unvaried work consequential to complying with the ordered variation;
 - (iii) the cost or reduction in cost allowed for contingencies and risk;
 - (iv) the cost or reduction in cost allowed for all overheads;
 - (v) the cost or reduction in cost allowed for profit;
 - (vi) copies of all relevant sub-contract or supply quotations;

The Contractor shall include with his lump sum quotation all such other information including quantities rates and prices as will enable the Engineer to properly evaluate such quotation.

The Contractor shall not later than 7 days after being requested by the Engineer provide such further information required by the Engineer to enable him to complete his evaluation of the lump sum quotation.

- (vii) No later than 21 days from the receipt of any such lump sum quotation or not later than 14 days after receipt of such further information referred to in sub-clause (1)(a)(vi) of this Clause 52 whichever is the later the Engineer shall either;
- (a) instruct the Contractor at his sole discretion in a subsequent variation to proceed with the work the subject of such variation for such lump sum as specified for the original variation or for such other lump sum agreed between the Engineer and the Contractor. Such lump sum shall be the full sum to which the Contractor is entitled for complying with the subsequent ordered variation and no further claim for additional monies shall be made by him in respect of such subsequent variation; or
 - (b) decline to accept the lump sum quotation and proceed no further with the work the subject of the original variation.
- (b) By the Engineer ordering in writing that any varied work shall be ordered on the basis of the proper and reasonable varied costs actually incurred by the Contractor. Costs for the purpose of this sub-clause (1)(b) shall exclude any element of Contractor's head office overheads and profit or the Contractor's profit. The Contractor shall then be paid for such work, which shall be the reasonable varied costs actually incurred by the Contractor. To the amount of such proper and reasonable varied Contractor's costs shall be added the percentage identified in Appendix A to the Form of Final Tender in respect of Contractor's head office overheads and profit.

Unless otherwise agreed in writing by the Engineer, the Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering materials shall submit to the Engineer quotations for the same for his approval.

In respect of all work executed on the basis of proper and reasonable varied costs actually incurred by the Contractor the Contractor shall during the continuance of such work deliver each day to the Engineer's Representative an exact listing in duplicate of the names occupation and time of all workmen employed on such work and a statement also in duplicate showing the description and quantity of all materials and plant used thereon or therefor. One copy of each list and statement will if correct or when agreed be signed by the Engineer's Representative and returned to the Contractor. At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour material and plant used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorise payment for such work (on being satisfied as to the time

employed and the plant and materials used on such work) at such value therefor as he shall consider fair and reasonable.

- (c) The actual principle to be employed for the valuation of each ordered variation shall be at the sole discretion of the Engineer.

Notwithstanding the earlier provisions of this Clause 52 the Engineer shall ascertain the value of a Deemed Variation for any Grouting Works, solely by application of the relevant rates and prices contained in the Schedule of Rates and Prices against demonstrable quantities of work carried out for each relevant rate and price applicable to the Grouting Works. The Contractor shall be required to provide demonstration of such quantities to the satisfaction of the Engineer to allow the Engineer to ascertain the said value of each Deemed Variation. For the avoidance of doubt other than the application of the relevant rates and prices from the Schedule of Rates and Prices against the demonstrable quantities referred to earlier no other adjustment to the Final Tender Total shall be made for and as a consequence of the Contractor carrying out any Grouting Works.

Notwithstanding the earlier provisions of this Clause 52 the Engineer shall ascertain the value of a Deemed Variation for any Planting Works, solely by application of the relevant rates and prices contained in the Schedule of Rates and Prices for Planting Works against demonstrable changes in quantities of planting in the Planting Works when compared against the equivalent quantities contained in the Indicative Planting Works Conceptual Design (Refer to quantities contained in the Schedule of Rates and Prices for Planting Works).

Notwithstanding such:

- (i) the changes in the quantities may be an increase or a decrease against the original quantities specified for the Indicative Planting Works Conceptual Design.
- (ii) other than the application of the relevant rates and prices from the Schedule of Rates and Prices for Planting Works against the demonstrable changes to quantities referred to earlier no other adjustment to the Final Tender Total shall be made for and consequence of the Contractor carrying out any Planting Works.
- (iii) the Contractor shall ensure that the Design construction completion and maintenance of the Planting Works shall be carried out by a landscape architect in compliance with the requirements of the Employer's Requirements.
- (iv) the aforementioned rates and prices include for any modifications to the percentage make up of various types of planting descriptions contained in the Employer's Requirements and the Specification. Prior to incorporating such changed percentage make ups into the Planting Works the Contractor shall require to seek and obtain written consent of the Engineer.

PROPERTY IN MATERIALS AND PLANT

53 (1) For the purpose of this Clause:

(a) the expression “**Plant**” shall mean any Constructional Plant Temporary Works and materials for Temporary Works but shall exclude any vehicles engaged in transporting any labour plant or materials to or from the Site;

**Plant, etc. -
Definitions**

(b) the expression “**agreement for hire**” shall be deemed not to include an agreement for hire purchase.

(2) All Plant goods and materials owned by the Contractor or by any company in which the Contractor has a controlling interest shall when on the Site be deemed to be the property of the Employer.

Vesting of Plant

(3) With a view to securing in the event of a forfeiture under Clause 63 the continued availability for the purpose of executing the Works of any hired Plant the Contractor shall not bring on to the Site any hired Plant unless there is an agreement for the hire thereof which contains a provision that the owner thereof will on request in writing made by the Employer within 7 days after the date on which any forfeiture has become effective and on the Employer undertaking to pay all hire charges in respect thereof from such date hire such Plant to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of completing the Works under the terms of the said Clause 63.

**Conditions of
Hire of Plant**

(4) In the event of the Employer entering into any agreement for the hire of Plant pursuant to sub-clause (3) of this Clause all sums properly paid by the Employer under the provisions of any such agreement and all expenses incurred by him (including stamp duties) in entering into such agreement shall be deemed for the purpose of Clause 63 to be part of the cost of completing the Works.

**Costs for
Purposes of
Clause 63**

(5) The Contractor shall upon request made by the Engineer at any time in relation to any item of Plant forthwith notify to the Engineer in writing the name and address of the owner thereof and shall in the case of hired Plant certify that the agreement for the hire thereof contains a provision in accordance with the requirements of sub-clause (3) of this Clause.

**Notification of
Plant Ownership**

(6) No Plant (except hired Plant) goods or materials or any part thereof shall be removed from the Site without the written consent of the Engineer which consent shall not be unreasonably withheld where the same are no longer immediately required for the purposes of the completion of the Works but the Employer will permit the Contractor the exclusive use of all such Plant goods and materials in and for the completion of the Works until the occurrence of any event which gives the Employer the right to exclude the Contractor from the Site and proceed with the completion of the Works.

**Irremovability of
Plant, etc.**

(7) Upon the removal of any such Plant goods or materials as have been deemed to have become the property of the Employer under sub-clause (2) of this Clause with the consent as aforesaid the property therein shall be deemed to revest in the Contractor and upon completion of the Works the property in the remainder of such Plant goods and materials as aforesaid shall subject to Clause 63 be deemed to revest in the Contractor.

Revesting and Removal of Plant

(8) If the Contractor shall fail to remove any Plant goods or materials as required pursuant to Clause 33 within such reasonable time after completion of the Works as may be allowed by the Engineer then the Employer may:

Disposal of Plant

(a) sell any which are the property of the Contractor; and

(b) return any not the property of the Contractor to the owner thereof at the Contractor's expense; and after deducting from any proceeds of sale the costs charges and expenses of and in connection with such sale and of and in connection with return as aforesaid shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs charges and expenses the excess shall be a debt due from the Contractor to the Employer and shall be deductible or recoverable by the Employer from any monies due or that may become due to the Contractor under the contract or may be recovered by the Employer from the Contractor at law.

(9) The Employer shall not at any time be liable for the loss of or injury to any of the Plant goods or materials which have been deemed to become the property of the Employer under sub-clause (2) of this Clause save as mentioned in Clauses 20 and 65.

Liability for Loss or Injury to Plant

(10)The Contractor shall where entering into any sub-contract for the execution of any part of the Works incorporate in such sub-contract (by reference or otherwise) the provisions of this Clause in relation to Plant goods or materials brought on to the Site by the sub-contractor.

Incorporation of Clause in Sub-contracts

(11)The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to herein nor shall it prevent the rejection of any such materials at any time by the Engineer.

No approval by Vesting

54

(1) The Contractor shall not be entitled to any payment in respect of goods and/or materials before the same are incorporated into the Works unless the Employer and the Contractor have entered into a separate contract for the purchase by the Employer from the Contractor of any such goods and/or materials and upon such a contract being entered into the purchase price of the said good and/or materials shall be excluded altogether from the Contract and the price under the Contract shall be adjusted accordingly.

No payment for Goods and Materials not incorporated into the Works

MEASUREMENT

- 55** (1) The “**Milestones Schedule**” shall have the meaning given to it in Appendix J to Form of Final Tender. **Milestones Schedule and Schedule of Rates and Prices**
- The “**Schedule of Rates and Prices**” referred to in the Contract shall mean the Schedule of Rates and Prices listed in:
- (a) “Appendix L to Form of Final Tender”; and
- (2) Any error in description in the: **Correction of Errors**
- (a) Breakdown of Final Tender Total; or
- (b) Schedule of Rates and Prices; or
- (c) Milestones Schedule or
- omission therefrom shall not vitiate the Contract nor release the Contractor from the execution of the whole or any part of the Design, construction, completion and maintenance of the Works in accordance with the Contract or from any of his other obligations or liabilities under the Contract.
- Any such error or omission in either the:
- (a) Breakdown of Final Tender Total; or
- (b) Schedule of Rates and Prices; or
- (c) Milestones Schedule
- shall be deemed to be covered by the remainder of the Breakdown of Final Tender Total or the Schedule of Rates and Prices or the Milestones Schedule and the Final Tender Total shall not be varied as a result of any such matter and there shall be no rectification of any errors omissions or wrong estimates in the description and rates and prices inserted by the Participant in the Breakdown of Final Tender Total and Schedule of Rates and Prices and the Contractor in the Milestones Schedule.
- 56** (1) The Engineer shall determine for the purposes of Clause 60(1) the proportion of the Final Tender Total, which in his opinion the Contractor is due. The Final Tender Total shall not be changed for any reason other than: **Final Tender Total**
- (a) a variation ordered by the Engineer provided that any such variation necessitated by the failure of the Contractor to comply with the Contract shall not rank for payment to the Contractor; or a Deemed Variation; or
- (b) an amount certified by the Engineer in respect of a change to the Final Tender Total authorised by virtue of the terms of these Conditions of Contract.
- (2) The Engineer shall when he requires any part or parts of the Works to be measured give reasonable notice to the Contractor who shall attend or send a qualified agent to assist the Engineer or the Engineer’s Representative in making such measurement and shall furnish all particulars required by either of them. Should **Attending for Measurement**

the Contractor not attend or neglect or omit to send such agent then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work.

57 Not Used.

58 Not Used.

PROJECT BANK ACCOUNT

59 (1) Contemporaneously with the execution of this Contract the Contractor shall deliver to the Employer the Project Bank Account Documents; **Project Bank Account**

(2) If the Contractor sub-lets any part of the Works in accordance with Clause 4.1 or enters into any sub-contract for goods or services in connection with the Contract then the Contractor shall inform any such subcontractors of the arrangements under this Contract for the operation of a Project Bank Account and shall invite such subcontractors to participate.

(3) The Contractor shall incorporate into sub-contracts with its subcontractors provisions in similar terms to those set out in Clause 59(2) above (and shall use its best endeavours to ensure that all Supply Chain Member subcontracts contain similar provisions) subject only to modification to refer to the correct designation of the equivalent party as the sub-contractor or Supply Chain Member as the case may be. The Contractor shall also incorporate into sub-contracts with its subcontractors (and use its best endeavours to ensure that all Supply Chain Member subcontracts contain a similar provision) a provision in similar terms to those set out in Clause 59(7) below which informs the subcontractors and Supply Chain Members of the grounds on which they may not be permitted to participate in the Project Bank Account arrangements.

(4) In addition to the above, the Contractor shall:

(a) incorporate into sub-contracts with its Named Subcontractors;

(b) ensure that its subcontractors incorporate into sub-contracts with Named Subcontractors; and

(c) use its best endeavours to ensure that Supply Chain Members incorporate into sub-contracts with their Named Subcontractors,

the arrangements as set out in this Contract for the operation of the Project Bank Account.

(5) The Contractor shall ensure that the Named Subcontractors included in the Contractor's Final Tender and the Contractor itself shall execute Additional Party Agreements within seven days of entering into the Contract. The Contractor shall inform the Engineer and the Employer if a subcontractor or Supply Chain Member is to be added to the Named Subcontractors. The

- Employer, the Contractor and the subcontractor or Supply Chain Member shall execute the Additional Party Agreement as soon as practicable following the appointment of any such additional subcontractors or Supply Chain Members.
- (6) If any subcontractor informs the Contractor that it (or any Supply Chain Member) does not wish to participate in the Project Bank Account arrangements then the Contractor shall require the subcontractor to provide in writing its, or the Supply Chain Member's, reasons for non-participation. The Contractor shall forthwith provide the Employer with a copy of the subcontractor's or Supply Chain Member's reasons for non-participation.
- (7) Subject to Clause 59(8), the Contractor, acting reasonably, may decide that it is not appropriate or reasonable in all the circumstances for a subcontractor or Supply Chain Member to participate in the Project Bank Account arrangements. Such a decision shall be deemed to be reasonable if it falls within one or more of the following (non-exhaustive) grounds: the value of the sub-contract is below 1% of the contract award value (excluding VAT); the duration of the sub-contract is less than one calendar month; the payment provisions of the sub-contract are more frequent than those set out in this Contract, or cannot otherwise be aligned with the payment provisions of this Contract.
- (8) The Contractor shall ensure that subcontractors and Supply Chain Members whose participation in the Project Bank Account is deemed not appropriate in accordance with Clause 59(7) only insofar as the value of their subcontract being below 1% of the main contract award value but who wish to participate in the Project Bank Account are permitted to do so. The Employer, the Contractor and the subcontractor or Supply Chain Member shall execute the Additional Party Agreement as soon as practicable following the appointment of any such additional subcontractors or Supply Chain Members.
- (9) The Employer shall pay into the Project Bank Account no later than seven days before the final date for payment each payment certified as due in accordance with Clauses 60(3), 60(4) and 60(7), as applicable, or the sum claimed by the Contractor in the relevant Contractor's statement where Clause 60(8) applies or the amount stated as due in the relevant Pay Less Notice where Clause 60(13) applies.
- (10) The Employer and the Contractor shall utilise the Project Bank Account Online Banking, and once a payment has been made into the Project Bank Account by the Employer in accordance with Clause 59(9) the Contractor shall without delay complete an Authorisation (online) in respect of the payment specifying the sums due to the Named Subcontractors and the balance due to the Contractor (which for the avoidance of doubt shall not exceed the total amount certified as due by the Engineer in accordance with Clauses 60(3), 60(4) or 60(7) as applicable or the sum claimed by the Contractor in the relevant Contractor's statement where Clause 60(8) applies or the amount stated as due in the relevant Pay Less Notice where Clause 60(13) applies) and the

- Contractor shall at the same time notify the Employer that the Contractor has completed the Contractor's Authorisation (online) and the Employer shall then without delay complete an Authorisation (online) in order to release payments in accordance with the Contractor's Authorisation (online).
- (11) This Clause 59(11) shall apply at the Employer's entire discretion (in particular is it intended that this Clause 59(11) will apply in circumstances where the Project Bank Account Online Banking is not functioning). In respect of each payment due, the Contractor shall prepare and sign the Authorisation (written), setting out the sums due to the Named Subcontractors and the balance due to the Contractor (which for the avoidance of doubt shall not exceed the total amount certified as due by the Engineer in accordance with Clauses 60(3), 60(4) or 60(7) as applicable or the sum claimed by the Contractor in the relevant Contractor's statement where Clause 60(8) applies or the amount stated as due in the relevant Pay Less Notice where Clause 60(13) applies) and shall submit the Authorisation (written) to the Engineer no later than seven days before the final date for payment. The Engineer shall arrange for the Employer to sign the Authorisation (written) and submit it to the Project Bank no later than one day before the final payment date.
- (12) The Contractor and the Named Subcontractors shall receive payment of the sums set out in the Authorisation by the final date for payment.
- (13) Payment into the Project Bank Account shall discharge the Employer's obligation to make payment under this Contract, to the extent of that payment.
- (14) The Contractor shall ensure that any subcontractors and suppliers who shall be non-participants in the Project Bank Account, shall be entitled to prompt payment in accordance with Clauses 72(1) and 72(2).

CERTIFICATES AND PAYMENT

- 60** (1) Unless otherwise agreed by the Employer and the Contractor, the Contractor shall submit to the Engineer at monthly intervals commencing within one month after the Date for Commencement of the Works, until up to one month after the date of the Certificate of Completion and thereafter on the first anniversary of the Completion Date, on the second anniversary of the Completion Date, on the third anniversary of the Completion Date, on the fourth anniversary of the Completion Date and immediately following the Maintenance Certificate a statement (in such form as may be prescribed in the Specification or as may otherwise be specified by the Employer) showing:
- (a) each of the Milestones identified in the Milestones Schedule which the Contractor considers is:
- (i) 15 percent complete; or
 - (ii) 30 percent complete; or
 - (iii) 45 percent complete; or

Monthly Statements

- (iv) 60 percent complete; or
- (v) 75 percent complete; or
- (vi) 90 percent complete; or
- (vii) 100 percent complete.

- (b) the estimated amounts to which the Contractor considers himself entitled in connection with all other matters for which provision is made under the Contract;
- (c) any other sums due to or to be paid to or which may be deducted by the Employer pursuant to this Contract; and
- (d) the basis on which those amounts specified in sub-clauses (a) – (c) in this Clause 60(1) are calculated.

unless in the opinion of the Contractor such values and amounts together will not justify the issue of an interim certificate.

The payments become due 14 days after delivery to the Engineer of the Contractor's monthly statement complying with this Clause 60(1) with the final date for payment being 14 days after the due date.

Statements submitted in February and March of each year shall be delivered to the Engineer or the Engineer's Representative between the 8th and 10th of the month (if specifically requested by the Engineer or the Engineer's Representative).

- (2) Unless otherwise agreed by the Employer and the Contractor, the Contractor shall submit to the Engineer along with the Monthly Statements in accordance with Clause 60(1), a **Projected Monthly Statement Profile** to cover the period from the Date for Commencement of the Works to date of the expiration of the Period of Maintenance. **Projected Monthly Statements**
- (3) Within 14 days of the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement the Engineer shall certify the amount due to the Contractor or to the Employer (after deducting any previous payments on account) and shall set out in the Engineer's certificate the basis on which this amount is calculated. The Engineer's certificate shall be issued by the Engineer to the Contractor and the Employer simultaneously. Each certificate shall constitute a Payer Notice. The certificate shall set out separately: **Monthly Payments**
 - (a) the amount which in the opinion of the Engineer on the basis of the monthly statement is due to the Contractor on the due date on account of Clause 60(1)(a) and (b) after deduction of (i) retention as provided in Clause 60(6); (ii) any sum for Lane Occupation Charges due to the Employer in accordance with Clause 75; (iii) any sum paid to the Railway Infrastructure Controller (Network Rail) by the Employer in accordance with Clause 78; and (iv) any other sums due to or to be paid to or which may be deducted by the Employer pursuant to this Contract.

- (b) Not used.
- (c) the amounts that have been determined by the Auditor in accordance with Clauses 18(9) to (19) inclusive to be due to the Contractor as reimbursement of Protestor Related Costs.
- (4) Within 3 months of the Contractor's receipt of the Maintenance Certificate as referred to in Clause 61 the Contractor shall submit to the Engineer a statement of final account and full supporting documentation showing in detail the value in accordance with the Contract of the work done in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract up to the date of the Maintenance Certificate and shall state the balance if any properly due on the due date (as referred to in Clause 60 (5)) from the Employer to the Contractor or from the Contractor to the Employer as the case may be and shall state the basis on which that amount has been calculated. No later than 3 months after receipt of this final account and of all information reasonably required for its verification the Engineer shall issue a final certificate stating the amount which in his opinion is finally due under the Contract up to the date of the Maintenance Certificate as at the due date (as referred to in Clause 60 (5)) and the basis upon which this sum is calculated. The final certificate shall set out all amounts previously paid by the Employer and the Contractor, all sums to which they are entitled under the Contract up to the date of the Maintenance Certificate and the balance if any due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall be paid to or by the Contractor as the case may require. The final certificate shall be issued by the Engineer to the Contractor and the Employer simultaneously. The final certificate shall constitute a Payer Notice.
- (5) Payment will become due 3 months after receipt by the Engineer of the Contractor's statement of final account and full supporting documentation in accordance with Clause 60(4). The final date for payment is 28 days from the due date.

Final Account

- (6) Subject to any other provision of the Contract no retention shall be made pursuant to Clause 60(3)(a) if the Contractor has delivered an acceptable retention bond in the format referred to in Clause 10.

Retention

Where the Contractor has not delivered or chooses not to deliver an acceptable retention bond in the format referred to in Clause 10 the retention that shall be made by the Employer shall pursuant to Clause 60(3)(a) be a sum equal to 5 percent of the amount that would otherwise be due to the Contractor until a reserve shall have accumulated in the hand of the Employer up to three percent of the Final Tender Total;

Except that the limit shall be reduced by the amount of any payment that shall have been made pursuant to Clause 60(7).

Subject to any other provision of Clause 60(6) the said retention shall be retained from the Contractor until:

- (a) such time as the Contractor provides an acceptable retention bond referred to in Clause 10; or
 - (b) the relevant dates referred to in Clause 60(7) where the Contractor does not provide an acceptable retention bond to the Employer pursuant to Clause 10.
- (7) (a) The date on which the Engineer shall have issued a Certificate of Completion for the whole of the Works pursuant to Clause 48(1) shall hereinafter be referred to as the **“Completion Date”**. **Payment of Retention Money**
- (b) The first instalment amounting to twenty five percent of the retention money becomes due to the Contractor 14 days after the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement that is to be issued immediately following the Completion Date (provided the Contractor's said monthly statement expressly makes application for such twenty five percent of the retention money), and the relevant information pursuant to Clause 6(2). The Engineer shall certify the sum due and the basis on which this has been calculated on or before the due date. The Engineer's certificate shall be issued simultaneously to both the Employer and the Contractor. The certificate shall constitute a Payer Notice. The final date for payment shall be fourteen days after the due date.
 - (c) The second instalment amounting to fifteen percent of the retention money becomes due to the Contractor 14 days after the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement that is to be issued immediately following the first anniversary of the Completion Date (which shall be notified to the Contractor by the Engineer) (provided the Contractor's said monthly statement expressly makes application for such fifteen percent of the retention money) and the relevant information pursuant to Clause 6(4). The Engineer shall certify the sum due and the basis on which this has been calculated on or before the due date. The Engineer's certificate shall be issued simultaneously to both the Employer and the Contractor. The certificate shall constitute a Payer Notice. The final date for payment shall be fourteen days after the due date.
 - (d) The third instalment amounting to fifteen percent of the retention money becomes due to the Contractor 14 days after the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement that is to be issued immediately following the second anniversary of the Completion Date (which shall be notified to the Contractor by the Engineer) (provided the Contractor's said monthly statement expressly makes application for such fifteen percent of the retention money) and the relevant information

pursuant to Clause 6(4). The Engineer shall certify the sum due and the basis on which this has been calculated on or before the due date. The Engineer's certificate shall be issued simultaneously to both the Employer and the Contractor. The certificate shall constitute a Payer Notice. The final date for payment shall be fourteen days after the due date.

- (e) The fourth instalment amounting to fifteen percent of the retention money becomes due to the Contractor 14 days after the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement that is to be issued immediately following the third anniversary of the Completion Date (which shall be notified to the Contractor by the Engineer) (provided the Contractor's said monthly statement expressly makes application for such fifteen percent of the retention money) and the relevant information pursuant to Clause 6(3). The Engineer shall certify the sum due and the basis on which this has been calculated on or before the due date. The Engineer's certificate shall be issued simultaneously to both the Employer and the Contractor. The certificate shall constitute a Payer Notice. The final date for payment shall be fourteen days after the due date.
- (f) The fifth instalment amounting to fifteen percent of the retention money becomes due to the Contractor 14 days after the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement that is to be issued immediately following the fourth anniversary of the Completion Date (which shall be notified to the Contractor by the Engineer) (provided the Contractor's said monthly statement expressly makes application for such fifteen percent of the retention money) and the relevant information pursuant to Clause 6(3). The Engineer shall certify the sum due and the basis on which this has been calculated on or before the due date. The Engineer's certificate shall be issued simultaneously to both the Employer and the Contractor. Each certificate shall constitute a Payer Notice. The final date for payment shall be fourteen days after the due date.
- (g) The sixth and final instalment amounting to fifteen percent of the retention money becomes due to the Contractor 14 days after the date of delivery to the Engineer in accordance with Clause 60(1) of the Contractor's monthly statement that is to be issued immediately following the issue of the Maintenance Certificate (provided the Contractor's said monthly statement expressly makes application for such fifteen percent of the retention money), and the relevant information pursuant to Clause 6(3). The Engineer shall certify the sum due and the basis on which this has been calculated on or before the due date. The Engineer's certificate shall be issued simultaneously to both the Employer and the Contractor. Each certificate shall constitute a Payer Notice. The final date for payment shall be fourteen days after the due date.

- (h) Notwithstanding Clauses 60(7)(b), (c), (d), (e), (f) and (g), retention payments certified by the Engineer shall be reduced as follows:
- (i) If at any time prior to the final date for payment of any retention there shall remain to be executed by the Contractor any supply to the Engineer of any relevant information pursuant to Clause 6(2) or 6(3), any outstanding work referred to under Clause 48 or any works ordered during such period pursuant to Clauses 49 and 50 then provided the Engineer describes the relevant deduction in the Engineer's certificate or an appropriate Pay Less Notice is issued pursuant to 60(12) payment shall not be due from the Employer to the Contractor unless the amount of retention money that would be held by the Employer, after payment of the element of retention that has been applied for, would in the opinion of the Engineer represent an amount equal to or greater than the cost of the works so remaining to be executed.
 - (ii) If the Contractor incurs Lane Occupation Charges under Clause 75 during the Period of Maintenance these may be deducted by the Engineer from the amount certified provided the Engineer describes the relevant deduction in the Engineer's certificate or an appropriate Pay Less Notice is issued pursuant to 60(12).
- (8) In the event of a failure by the Engineer to certify in accordance with the time periods referred to in Clauses 60(3), 60(4) and 60(7) then the amount due to the Contractor on the final date for payment shall, subject to any Pay Less Notice pursuant to Clause 60(12), be the sum stated in the Contractor's monthly statement issued in accordance with Clause 60(1) or (where appropriate) the Contractor's statement of final account and full supporting documentation issued in accordance with Clause 60(4).
- (9) In the event of failure by the Employer or the Contractor as the case may require to make payment in accordance with Clauses 60(1), 60(5), 60(8) and 60(13) the Employer shall pay to the Contractor or the Contractor shall pay to the Employer interest upon any payment overdue thereunder at a rate per annum equivalent to 2 per cent plus the Base Lending Rate announced by the Royal Bank of Scotland which is current on the date upon which such payment first becomes overdue. In the event of any variation in the Base Lending Rate being announced whilst such payment remains overdue the interest payable for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation. Notwithstanding any other provision of this Clause a payment due to be made shall only be overdue for the purposes of this Clause if payment has not been made on or prior to the final date for such payment.
- (10) The Engineer shall have power to omit from any certificate the value of:

**Interest on
Overdue
Payments**

**Certificates and
work, goods,
materials or**

- (a) any work done goods or materials supplied or services rendered with which he may for the time being be dissatisfied and for that purpose or for any other reason which to him may seem proper may by any certificate delete correct or modify any sum previously certified by him; and
- (b) any Milestone which he considers has not been properly achieved either:
- (i) 15 percent complete in accordance with the Contract, or
 - (ii) 30 percent complete in accordance with the Contract; or
 - (iii) 45 percent complete in accordance with the Contract, or
 - (iv) 60 percent complete in accordance with the Contract; or
 - (v) 75 percent complete in accordance with the Contract, or
 - (vi) 90 percent complete in accordance with the Contract; or
 - (vii) 100 percent complete in accordance with the Contract.
- (11) Every certificate issued by the Engineer pursuant to this Clause shall be sent to the Employer and to the Contractor. By such certificates the Engineer shall give notice to the Contractor or the Contractor shall give notice to the Employer as the case may require specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated.
- (12) Where a payment under Clause 60(3) or (4) or (7) is to differ from that certified or a payment under Clause 60(8) is to differ from the sum stated in the Contractor's monthly statement properly issued in accordance with Clause 60(1) or (where appropriate) the Contractor's statement of final account and full supporting documentation issued in accordance with Clause 60(4), the Employer or the Engineer shall notify the Contractor, or the Contractor shall give notice to the Employer as the case may require, in writing not later than eight days before the final date for payment specifying the amount the party paying considers to be due to the other party at the date the notice is served and the basis on which that sum has been calculated (the Pay Less Notice).
- (13) Where a Pay Less Notice is given by the Employer or the Engineer to the Contractor or the Contractor to the Employer, the payment to be made to the Contractor or to the Employer as the case may be on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.
- 61** (1) Upon the expiration of the Period of Maintenance or where there is more than one such period upon the expiration of the latest

services not in accordance with the Contract

Certificates and Payer Notices

Notice of Intention to Pay Less

Maintenance Certificate

period and when all outstanding work referred to under Clause 48 and all work of repair amendment reconstruction rectification and making good of defects imperfections shrinkages and other faults referred to under Clauses 49 and 50 shall have been completed and the Engineer shall have received from the Contractor all the relevant certificates and the final As Constructed Requirements in respect of the Design, construction, completion and maintenance of the Works required by the Contract the Engineer shall issue to the Employer (with a copy to the Contractor) a Maintenance Certificate stating the date on which the Contractor shall have completed his obligations to Design, construct, complete and maintain the Works to the Engineer's satisfaction.

- (2) The issue of the Maintenance Certificate shall not be taken as relieving either the Contractor or the Employer from any liability the one towards the other arising out of or in any way connected with the performance of their respective obligations under the Contract.

Unfulfilled Obligations

REMEDIES AND POWERS

- 62** If by reason of any accident or failure or other event occurring to in or in connection with the Works or any part thereof either during the execution of the Works or during the Period of Maintenance any remedial or other work or repair shall in the opinion of the Engineer be urgently necessary and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other workmen do such work or repair as the Engineer may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer shall as soon after the occurrence of any such accident or failure or other event as may be reasonably practicable notify the Contractor thereof in writing.

Urgent Repairs

- 63** (1) If
- (a) the Contractor shall be in default in that he:
- (i) becomes bankrupt or has a receiving order or administration order made against him or presents his petition in bankruptcy or makes an arrangement with or assignment in favour of his creditors or agrees to carry out the Contract under a committee of inspection of his creditors or (being a corporation) goes into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time); or
- (ii) assigns the Contract without the consent in writing of the Employer first obtained; or

Determination of Contractor's Employment

- (iii) has an execution levied on his goods which is not stayed or discharged within 28 days; or
- (b) the Engineer certifies in writing to the Employer that in his opinion the Contractor:
 - (i) has abandoned the Contract; or
 - (ii) without reasonable excuse has failed to commence the Design or the Works in accordance with Clause 41 or has suspended the progress of the Design or the Works for 14 days after receiving from the Engineer written notice to proceed; or
 - (iii) has failed to remove goods or materials from the Site or to pull down and replace work for 14 days after receiving from the Engineer written notice that the said goods materials or work have been condemned and rejected by the Engineer; or
 - (iv) despite previous warning by the Engineer in writing is failing to proceed with the Design or the Works with due diligence or is otherwise persistently or fundamentally in breach of his obligations under Contract;
 - (v) has to the detriment of good workmanship or in defiance of the Engineer's instruction to the contrary sub-let any part of the Contract;
 - (vi) (vi) has not complied with any of the provisions of Clauses 23 to 25 inclusive;

then the Employer may after giving 7 days' notice in writing to the Contractor specifying the default, save in relation to Clause 63(a)(i) whereby the Employer shall be entitled to terminate forthwith, enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract. Provided that the Employer may extend the period of notice to give the Contractor opportunity to remedy the default.

- (c) In the event that the Contractor is in default in terms of Clause 63(a)(i) no further sum will become due to the Contractor and the Employer need not pay any sum that has already become due either:
 - (i) insofar as the Employer has given a Pay Less Notice under Clause 60(12); or
 - (ii) if the Contractor, after the last date upon which a Pay Less Notice could have been given by the Employer, has become insolvent as defined in section 113 of the Housing

Grants, Construction and Regeneration Act 1996 (as amended from time to time).

- (2) Where the Employer has entered upon the Site and the Works as hereinbefore provided he may himself complete the Design, construction, completion and maintenance of the Works or may employ any other contractor to complete the Design, construction, completion and maintenance of the Works and the Employer or such other contractor may use for such completion so much of the Contractor's Constructional Plant Temporary Works goods and materials which have been deemed to become the property of the Employer under Clauses 53 and 54 as he or they may think proper and the Employer may at any time sell any of the said Contractor's Constructional Plant Temporary Works and unused goods and materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.
- Completing the Design, construction, completion and maintenance of the Works**
- (3) By the said notice or by further notice in writing within 14 days of the date of expiry thereof the Engineer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign to the Employer the benefit of any agreement for the supply of any goods or materials or for the execution of any work including Design Services for the purposes of the Contract which the Contractor may have entered into.
- Assignment to Employer**
- (4) If the Employer enters and expels the Contractor under this Clause he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of completion damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.
- Payment after Determination**
- (5) As soon as may be practicable after any such entry and expulsion by the Employer the Engineer shall fix and determine as at the time of such entry and expulsion;
- Valuation at Date of Determination**
- (a) the amount (if any) which had been reasonably earned by or would reasonably accrue to the Contractor in respect of work actually done by him under the Contract; and
- (b) the value of any unused or partially used goods and materials and any Contractor's Constructional Plant and Temporary Works which had been deemed to become the property of the Employer under Clauses 53 and 54;

And shall certify accordingly.

The said determination may be carried out ex parte or by or after reference to the parties or after such investigation or enquiry as the Engineer may think fit to make or institute.

- 63A** The Employer shall be entitled by notice to the Contractor to determine the Contractor's employment under this Contract if the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010. **Bribery Act 2010**

FRUSTRATION

- 64** In the event of the Contract being frustrated whether by war or by any other supervening event which may occur independently of the will of the parties the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65(5) if the Contract had been determined by the Employer under Clause 65. **Payment in Event of Frustration**

WAR CLAUSE

- 65** (1) If during the currency of the Contract there shall be an outbreak of war (whether war is declared or not) in which Great Britain shall be engaged on a scale involving general mobilisation of the armed forces of the Crown the Contractor shall for a period of 28 days reckoned from midnight on the date that the order for general mobilisation is given continue so far as is physically possible to execute the Design, construction, completion and maintenance of the Works in accordance with the Contract. **Design and the Works to Continue for 28 days on Outbreak of War**
- (2) If at any time before the expiration of the said period of 28 days the Design, construction, completion and maintenance of the Works shall have been completed or completed so far as to be usable all provisions of the Contract shall continue to have full force and effect save that:
- (a) the Contractor shall in lieu of fulfilling his obligations under Clauses 49 and 50 be entitled at his option to allow against the sum due to him under the provisions hereof the cost (calculated at the prices ruling at the beginning of the said period of 28 days) as certified by the Engineer at the expiration of the Period of Maintenance of repair rectification and making good any work for the repair rectification or making good of which the Contractor would have been liable under the said Clauses had they continued to be applicable;
- (b) the Employer shall not be entitled at the expiration of the Period of Maintenance to withhold payment under Clause 60(7)(g) of the remaining parts of the retention money or any part thereof except such sum as may be allowable by the Contractor under the provisions of the last preceding paragraph which sum may (without prejudice to any other mode of recovery thereof) be deducted by the Employer from such parts. **Effect of Completion within 28 days**

- (3) If the Design, construction, completion and maintenance of the Works shall not have been completed as aforesaid the Employer shall be entitled to determine the Contract (with the exception of this Clause and Clauses 66 and 68) by giving notice in writing to the Contractor at any time after the aforesaid period of 28 days has expired and upon such notice being given the Contract shall (except as above mentioned) forthwith determine but without prejudice to the claims of either party in respect of any antecedent breach thereof. **Right of Employer to Determine Contract**
- (4) If the Contract shall be determined under the provisions of the last preceding sub-clause the Contractor shall with all reasonable despatch remove from the Site all his Constructional Plant and shall give facilities to his sub-contractors to remove similarly all Constructional Plant belonging to them and in the event of any failure so to do the Employer shall have the like powers as are contained in Clause 53(8) in regard to failure to remove Constructional Plant on completion of the Works but subject to the same condition as is contained in Clause 53(9). **Removal of Plant on Determination**
- (5) If the Contract shall be determined as aforesaid the Contractor shall be paid by the Employer (insofar as such amounts or items shall not have been already covered by payment on account made to the Contractor) for all work executed prior to the date of determination at the rates and prices provided in the Contract and in addition: **Payment on Determination**
- (a) the amounts payable in respect of any preliminary items and Design so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of any such items the work or service comprised in which has been partially carried out or performed;
 - (b) the cost of materials or goods reasonably ordered for the Design, construction, completion and maintenance of the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made by him);
 - (c) a sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned;
 - (d) any additional sum payable under sub-clause (6)(b)(c) and (d) of this Clause;
 - (e) the reasonable cost of removal under sub-clause (4) of this Clause
- (6) Whether the Contract shall be determined under the provisions of sub-clause (3) of this Clause or not the following provisions shall apply or be deemed to have applied as from the date of the said **Provisions to Apply as from Outbreak of War**

outbreak of war notwithstanding anything expressed in or implied by the other terms of the Contract viz:

- (a) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of damage to the Design and the Works or to property (other than property of the Contractor or property hired by him for the purposes of executing the Design, construction, completion and maintenance of the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life to persons which is the consequence whether direct or indirect of war hostilities (whether war has been declared or not) invasion act of the Queen's enemies civil war rebellion revolution insurrection military or usurped power and the Employer shall indemnify the Contractor against all such liabilities and against all claims demands proceedings damages costs charges and expenses whatsoever arising thereout or in connection therewith.
- (b) If the Design and the Works shall sustain destruction or any damage by reason of any of the causes mentioned in the last preceding paragraph the Contractor shall nevertheless be entitled to payment for any part of the Works so destroyed or damaged and the Contractor shall be entitled to be paid by the Employer the cost of making good any such destruction or damage so far as may be required by the Engineer or as may be necessary for the completion of the Design, construction, completion and maintenance of the Works on a cost basis plus such profit as the Engineer may certify to be reasonable.
- (c) In the event that the Contract includes the Contract Price Fluctuations Clause the terms of that Clause shall continue to apply but if subsequent to the outbreak of war the index figures therein referred to shall cease to be published or in the event that the contract shall not include a Price Fluctuations Clause in that form the following paragraph shall have effect:

If under decision of the Civil Engineering Construction Conciliation Board or of any other body recognised as an appropriate body for regulating the rates of wages in any trade or industry other than the Civil Engineering Construction Industry to which Contractors undertaking works of civil engineering construction give effect by agreement or in practice or by reason of any Statute or Statutory Instrument there shall during the currency of the Contract be any increase or decrease in the wages or the rates of wages or in the allowances or rates of allowances (including allowances in respect of holidays) payable to or in respect of labour of any kind prevailing at the date of outbreak of war as then fixed by the said Board or such other body as aforesaid or by Statute or Statutory Instrument or any increase in the amount payable by the Contractor by virtue or in respect of any Scheme of State Insurance or if there shall be any increase or decrease in the cost prevailing at the date of the said outbreak of war of any materials consumable stores fuel or power (and whether for permanent or temporary works)

which increase or increases decrease or decreases shall result in an increase or decrease of cost to the Contractor in carrying out the Works the net increase or decrease of cost shall form an addition or deduction as the case may be to or from the Contract Price and be paid to or allowed by the Contractor accordingly.

- (d) If the cost of the Works to the Contractor shall be increased or decreased by reason of the provisions of any Statute or Statutory Instrument or other Government or Local Government Order or Regulation becoming applicable to the Works after the date of the said outbreak of war or by reason of any trade or industrial agreement entered into after such date to which the Civil Engineering Construction Conciliation Board or any other body as aforesaid is party or gives effect or by reason of any amendment of whatsoever nature of the Working Rule Agreement of the said Board or of any other body as aforesaid or by reason of any other circumstance or thing attributable to or consequent on such outbreak of war such increase or decrease of cost as certified by the Engineer shall be reimbursed by the Employer to the Contractor or allowed by the Contractor as the case may be.
- (e) Damage or injury caused by the explosion whenever occurring of any mine bomb shell grenade or other projectile missile or munitions of war and whether occurring before or after the cessation of hostilities shall be deemed to be the consequence of any of the events mentioned in sub-clause (6)(a) of this Clause.

DISPUTES RESOLUTION PROCEDURE

66

- (1) If any dispute or difference under or arising out of the Contract cannot be resolved by direct negotiations, each Party shall give consideration to any request by the other to refer the matter to mediation. Any dispute or difference under or arising out of the Contract may be referred by either Party to adjudication. Any such adjudication shall be in accordance with Part 1 of the Schedule to The Scheme for Construction Contracts (Scotland) Regulations 1998 as amended (“the Scheme”) subject to the following:
- (a) In addition to the information described in paragraph 1 of the Scheme, the notice of adjudication shall contain all the same information as shall be included in the referring Party’s referral notice and be accompanied by copies of, or relevant extracts from, the Contract and such other documents and information as the referring Party intends to rely upon;
- (b) The referring Party’s referral notice shall be the same as the referring Party’s notice of adjudication;

**Mediation /
Adjudication**

- (c) The nominating body shall be The Chartered Institute of Arbitrators (Scottish Branch);
 - (d) To the extent that the matters in dispute relate to legal issues including without limitation matters of contractual interpretation then, unless both Parties agree otherwise, the adjudicator shall be required to appoint a legally qualified advisor as an expert to assist the adjudicator in respect of those legal issues.
- (2) Subject to Clause 66(1), any dispute or difference under or arising out of the Contract shall be referred to arbitration in accordance with clauses 66(3) to 66(5) with the exception of any disputes or differences arising under or in respect of the Construction Industry Scheme (CIS) under the Finance Act 2004 (as amended from time to time) or value added tax, to the extent provided for in Clause 70 or that legislation provides another method of resolving such disputes or differences; and any disputes or differences in connection with the enforcement of any decision of an adjudicator.
- (3) Any reference to arbitration to be made or any arbitration conducted pursuant to Clause 66(2) shall be in accordance with the Arbitration (Scotland) Act 2010 subject to disapplication in whole or in part of any of the default rules of the Scottish Arbitration Rules comprising Schedule 1 to that Act by agreement between the Parties.
- (4) Where pursuant to Clause 66(2) either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Employer and the Contractor or, failing such agreement within 14 days (or an agreed extension of that period) after the notice of arbitration is served, appointed on the application of the referring Party by the Chairman of The Chartered Institute of Arbitrators (Scottish Branch).
- (5) The powers of the Arbitrator are set out in the Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules subject to disapplication in whole or in part of any default rules of the Scottish Arbitration Rules (as referred to in Clause 66(3)), together with the following additional powers:
- (a) To direct such measurements and/or variations as may in the Arbitrator's opinion be desirable in order to determine the rights of the Parties.

Arbitration

- (b) To ascertain and award any sum which ought to have been referred to or included in any certificate.
- (c) To open up, review and revise any certificate, opinion, decision, requirement or notice.
- (d) To determine all matters in dispute which shall be submitted to the Arbitrator in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

(6) Subject to clause 66(1) (adjudication) and clauses 66(2) to 66(5) (arbitration), the Scottish courts shall have jurisdiction over any dispute or difference between the Parties under, arising out of or connected with the Contract.

Court Proceedings

(7) Notwithstanding the existence of a dispute or difference under or arising out of the Contract and unless the Contract has already been determined or abandoned the Employer and the Contractor shall continue to perform their obligations under the Contract.

General

(8) The Employer and the Contractor shall give effect forthwith to every decision of:

- (a) the Engineer on any matter arising concerning the Contract;
- (b) the adjudicator on a dispute or difference given under this Clause 66

unless and until the decision is revised by agreement of the Employer and the Contractor or pursuant to this Clause 66.

(9) No decision opinion instruction direction certificate or valuation given by the Engineer under the Contract shall disqualify the Engineer from being called as a witness and giving evidence before an adjudicator or arbitrator on any matter relevant to any dispute or difference under or arising out of the Contract.

67 The Contract and every sub-contract and order for goods and services including Design services shall be interpreted in accordance with Scots Law and shall be subject to the jurisdiction of the Scottish Courts.

Scots Law

- (4) In this Clause workpeople means persons employed by the Contractor on manual labour whether skilled or unskilled but for the purpose of ascertaining what if any additions or deductions are to be paid or allowed under this Clause account shall not be taken of any labour-tax matter in relation to any workpeople of the Contractor unless at the relevant time their normal place of employment is the Site.
- (5) The Contractor may incorporate in any sub-contract made for the purpose of performing his obligations under the Contract provisions which are mutatis mutandis the same as the provisions of this Clause and in such event additions or deductions to be made in accordance with any such sub-contract shall also be made under the Contract as if the increase or decrease of cost to the sub-contractor had been directly incurred by the Contractor.
- (6) As soon as practicable after the occurrence of any of the events specified in sub-clause (3) of this Clause the Contractor shall give the Engineer notice thereof. The Contractor shall keep such contemporary records as are necessary for the purpose of ascertaining the amount of any addition or deduction to be made in accordance with this Clause and shall permit the Engineer to inspect such records. The Contractor shall submit to the Engineer with his monthly statements full details of every addition or deduction to be made in accordance with this Clause. All certificates for payment issued after submission of such details shall take due account of the additions or deductions to which such details relate. Provided that the Engineer may if the Contractor fails to submit full details of any deduction nevertheless take account of such deduction when issuing any certificate for payment.

- 70** (1) In this Clause "**exempt supply**" "**invoice**" "**tax**" "**taxable person**" and "**taxable supply**" have the same meanings as in the Value Added Tax Act 1994 (hereinafter referred to within this Clause 70 as "**the Act**") including any amendment or re-enactment thereof and any reference to the Value Added Tax (General) Regulations 1972 (S.I. 1972/1147) (hereinafter referred to as the "**V.A.T Regulations**") shall be treated as a reference to any enactment corresponding to those regulations for the time being in force in consequence of any amendment or re-enactment of those regulations.
- (2) The Contractor shall be deemed not to have allowed in his Final Tender for the tax payable by him as a taxable person to the Commissioners of Customs and Excise being tax chargeable on any taxable supplies to the Employer which are to be made under the Contract.
- (3) (a) The Contractor shall not in any statement submitted under Clause 60 include any element on account of tax in any item or claim contained in or submitted with the statement.
- (b) The Contractor shall concurrently with the submission of the statement referred to in sub-clause (3)(a) of this Clause furnish the Employer with a written estimate showing those supplies

of goods and services and the values thereof included in the said statement and on which tax will be chargeable under Regulation 21 of the V.A.T. Regulations at a rate other than zero.

- (4) At the same time as payment (other than payment in accordance with this sub-clause) for goods or services which were the subject of a taxable supply provided by the Contractor as a taxable person to the Employer is made in accordance with the Contract there shall also be paid by the Employer a sum (separately identified by the Employer and in this Clause referred to as "**the tax payment**") equal to the amount of tax payable by the Contractor on that supply. Within seven days of each payment the Contractor shall:
- (a) if he agrees with that tax payment or any part thereof issue to the Employer an authenticated receipt of the kind referred to in Regulation 21(2) of the V.A.T. Regulations in respect of that payment or that part; and
 - (b) if he disagrees with that tax payment or any part thereof notify the Employer in writing stating the grounds of his disagreement.
- (5) (a) If any dispute difference or question arises between the Employer and the Contractor in relation to any of the matters specified in Section 83 of the Act then:
- (i) if the Employer so requires the Contractor shall refer the matter to the said Commissioners for their decision on it;
 - (ii) if the Contractor refers the matter to the said Commissioners (whether or not in pursuance of sub-clause (5)(a)(i) of this Clause) and the Employer is dissatisfied with their decision on the matter the Contractor shall at the Employer's request refer the matter to a Value Added Tax Tribunal by way of appeal under Section 83 of the Act whether the Contractor is so dissatisfied or not;
 - (iii) a sum of money equal to the amount of tax which the Contractor in making a deposit with the said Commissioners under Section 84(3)(a) of the Act is required so to deposit shall be paid to the Contractor; and
 - (iv) If the Employer requires the Contractor to refer such a matter to the Tribunal in accordance with sub-clause (5)(a)(ii) of this Clause then he shall reimburse the Contractor any costs and any expenses reasonably and properly incurred in making that reference less any costs awarded to the Contractor by the Tribunal and the decision of the Tribunal shall be binding on the Employer to the same extent as it binds the Contractor.
- (b) Clause 66 shall not apply to any dispute difference or question arising under sub-clause (a) of this sub-clause.

- (6) (a) The Employer shall without prejudice to his rights under any other Clause hereof be entitled to recover from the Contractor:
 - (i) any tax payment made to the Contractor of a sum which is in excess of the sum (if any) which in all the circumstances was due in accordance with sub-clause (4) of this Clause;
 - (ii) in respect of any sum of money deposited by the Contractor pursuant to sub-clause (5)(a)(iii) of this Clause a sum equal to the amount repaid under Section 84(8) of the Act together with any interest thereon which may have been determined thereunder.
- (b) If the Contractor shall establish that the Commissioners have charged him in respect of a taxable supply for which he has received payment under this Clause tax greater in amount than the sum paid to him by the Employer the Employer shall subject to the provisions of sub-clause (5) of this Clause pay to the Contractor a sum equal to the difference between the tax previously paid and the tax charged to the Contractor by the Commissioners.

- (7) If after the date for return of the Final Tender the descriptions of any supplies of goods or services which at the date for return of the Final Tender are taxable or exempt supplies are with effect after the date for return of the Final Tender modified or extended by or under the Act and that modification or extension shall result in the Contractor having to pay either more or less tax or greater or smaller amounts attributable to tax and that tax or those amounts as the case may be shall be a direct expense or direct saving to the Contractor in carrying out the Works and not recoverable or allowable under the Contract or otherwise then there shall be paid to or allowed by the Contractor as appropriate a sum equivalent to that tax or amounts as the case may be.

Provided always that before that tax is included in any payment by the Employer or those amounts are included in any certificate by the Engineer as the case may be the Contractor shall supply all the information the Engineer requires to satisfy himself as to the Contractor's entitlement under this sub-clause.

- (8) The Contractor shall upon demand pay to the Employer the amount of any sum due in accordance with sub-clauses (6) and (7) of this Clause and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

71 Not used.

PROMPT PAYMENT ETC

72 For the purposes of performing the Contract

- (1) Any sub-contract for works entered into by the Contractor shall provide for timely payment of the sub-contractor on terms comparable to those specified in the Housing Grants Construction

**Prompt
Payment of
Sub-
Contractors**

and Regeneration Act 1996, as amended by the Local Democracy, Economic Development Construction Act 2009.

- (2) For any other sub-contract for goods or services the Contractor shall pay his suppliers within 30 days of the receipt of a valid demand for payment. **Prompt Payment of Suppliers**
- 73** (1) The Contractor or anyone employed by him or acting on his behalf shall not: **Non Corrupt Practices**
- (a) offer or give or agree to the giving to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract with the Employer or for showing or forbearing to show favour or disfavour of any person in relation to this or any other Contract with the Employer; or
- (b) enter into this or any other Contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.
- (2) Any breach of the above prohibitions or the commission of any offence under the Prevention of Corruption Acts 1889 to 1916 by the Contractor or anyone employed by him or acting on his behalf (whether such breach or offence is with or without the knowledge of the Contractor) in relation to this or any other Contract with the Employer shall entitle the Employer to enter upon the Site under Clause 63 and expel the Contractor therefrom and thereupon the provisions of Clause 63 shall have effect as if such breach or offence as aforesaid were expressed in Clause 63(1) as a ground therefore. In that case the Contractor shall not be entitled to payments on the Contract or Contracts beyond those (if any) provided for by Clause 63. In addition to the costs and expenses recoverable by the Employer as provided for in Clause 63 the Employer shall also be entitled to recover from the Contractor any other costs or losses incurred by the Employer consequent upon such breach by the Contractor or anyone employed by him (including recovery by the Employer of any payments made to the Contractor under the provisions of the Contract together with bank interest accrued since such payments had been made at the rate of 2 percent over the bank rate) and entry and expulsion under this Clause and to receive from the Contractor such sums as in the opinion of the Employer represents the amount or value of any gift consideration paid or agreed to be paid in breach of this Clause. **Breaches**
- (3) In every sub-contract of any part of the Works the Contractor shall incorporate such provisions as will impose on the sub-contractor liabilities similar to those imposed on the Contractor by this Clause and such provisions as will entitle the Contractor to determine the sub-contract on terms equivalent to those contained in Clause 63. **Provisions in Sub-contracts**

In the event of any breach by the sub-contractor of any such provision the Contractor shall without prejudice to any of his obligations under the Contract take action in accordance with the terms of the sub-contract to exercise his rights against the sub-contractor. Failure by the Contractor to take action shall be grounds for the exercise by the Employer of his right under sub-clause (2) of this Clause to enter the Site and expel the Contractor. When the Contractor exercises his rights against a sub-contractor in accordance with the Clause he shall make no claim nor agree to any claim being made on his behalf against the Employer in respect of any consequential delays and extra costs arising from the Contract.

- (4) Any dispute to the amount recoverable by the Employer from the Contractor under this Clause shall be settled in the manner provided by Clause 66.

Settlement of Disputes

- 74** When under the Contract any sum of money shall be recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any such sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract with the Employer or any contract with any Department or Office of Her Majesty's Government.

Money Recoverable under Government Contracts

LANE OCCUPATION CHARGES

- 75** (1) The Contractor shall subject to the provisions of this Clause (including Clause 75(7)) pay to the Employer Lane Occupation Charges in such sums per Lane Occupation as are stated in Appendix E to Form of Final Tender for whatever reason including work that may be required under Clause 49 or to finish the work (if any) outstanding at the date of completion as certified under Clause 48. The Contractor shall be liable for payment of said Lane Occupation Charges from and including the Date for Commencement of the Works until and including the latest date when the Contractor shall have completed all his obligations in respect of the Design, construction, completion and maintenance of the Works to the Engineers satisfaction pursuant to Clause 61(1) and when such date shall be specified in a Maintenance Certificate issued pursuant to Clause 61(1). Any payments due to the Employer for Lane Occupation Charges shall be effected by means of a deduction from the sum certified due to the Contractor in payment of any interim or other certificate by the Engineer. The Employer is not required to issue invoices to the Contractor
- (2) The Contractor shall be liable to pay the full Lane Occupation Charge for the Lane Occupation Period irrespective of the actual duration of such Lane Occupation. The Lane Occupation Charge shall be payable by the Contractor for each individual Lane Occupation on each Lane within the Site in accordance with Appendix E to Form of Final Tender except where a moving Lane Occupation as detailed in the current Traffic Signs Manual Chapter 8 within one Lane is used in which case only one Lane Occupation Charge per Lane shall be payable by the Contractor for each Lane

Lane Occupation Charges

Occupation Period provided the operation is carried out continuously.

- (3) If under Clause 49(3) work is carried out and paid for as if it were additional work and that work requires Lane Occupation then the Contractor shall not be liable to pay to the Employer Lane Occupation Charges for such work.
- (4) If pursuant to any Clause elsewhere in the Conditions of Contract the Contractor intends to claim reimbursement of Lane Occupation Charges he shall give notice to the Engineer. For the avoidance of doubt the Contractor shall not be entitled to claim reimbursement of Lane Occupation Charges incurred for whatsoever reason resulting from or as consequence of a Deemed Variation.
- (5) Where the Engineer has determined that the continuance of any Lane Occupation is undesirable or impracticable because of Exceptionally Adverse Weather or physical conditions due to Exceptionally Adverse Weather and in the opinion of the Engineer the Contractor has taken all reasonable steps to mitigate the effects of such conditions and to remove all restrictions to traffic the Engineer may at his discretion waive the charge for the Lane Occupation Charge so affected.
- (6) Where the Contractor is instructed by the Engineer to carry out emergency works the Contractor shall not be liable to pay to the Employer, Lane Occupation Charges for Lane Occupations required for such emergency works provided that the number of Lane Occupations does not exceed that assessed by the Engineer as necessary to carry out such emergency works. Should the number of Lane Occupations exceed that assessed by the Engineer then the Contractor shall be liable to pay to the Employer the full Lane Occupation Charge described in Appendix E to Form of Final Tender for the number of Lane Occupations in excess of that assessed by the Engineer.
- (7) The Contractor shall subject to the provisions of this Clause be liable for Lane Occupation Charges for each Lane Occupation that he undertakes. At each interim or monthly certificate the cumulative total of Lane Occupation Charges accrued to such date assessed in accordance with this Clause shall be compared by the Engineer to the Total of Lane Occupation Charges entered by the Contractor in Appendix E to Form of Final Tender. Should the cumulative total of Lane Occupation Charges accrued to such date by the Contractor exceed the Total of Lane Occupation Charges in Appendix E to Form of Final Tender then the Contractor shall pay to the Employer the balance between the two sums.
- (8) Should at the final account, and after the settlement of any disputes relating to Lane Occupations or Lane Occupation Charges, the Total of Lane Occupation Charges accrued by the Contractor be less than the Total of Lane Occupation Charges in Appendix E to Form of Final Tender then the Engineer shall certify and the Employer shall pay to the Contractor [REDACTED] of the difference between the two sums up to a maximum of £[REDACTED].

- (9) Notwithstanding any foregoing provision of this Clause and unless otherwise agreed with the Engineer or the Engineer's Representative the Contractor shall remove all restrictions to traffic in accordance with the requirements of the Contract immediately the work they are designed to facilitate is complete or ceases for whatever reason. The Contractor shall strictly observe all time limits with regard to applications for Lane Occupations and to permitted times and durations for the said Lane Occupations. The Engineer is not bound to accept any of the Contractor's proposals for Lane Occupations. Where the work involves emergency works for which the normal application periods do not apply the Engineer shall not unreasonably reject any of the Contractor's proposals.
- (10) Notwithstanding any foregoing provision of this Clause, where the Engineer has determined that the Lane Occupation is solely for works undertaken by utility companies and wholly outwith the Land Made Available for the Works, the Contractor shall not be liable to pay the Employer Lane Occupation Charges for such work.

CDM REGULATIONS 2015

76 (1) In this Clause:

Definitions

- (a) "**the Regulations**" means the Construction (Design and Management) Regulations 2015 or any statutory re-enactment or amendment thereof for the time being in force and including all guidance issued by the Health & Safety Executive or any governmental body or any department pursuant thereto;
- (b) "**principal contractor**" and "**principal designer**" means the persons so described in regulation 2(1) of the Regulations;

(2) The Contractor is appointed as principal contractor under the Regulations.
The Contractor is appointed as principal designer under the Regulations

**Duty holder
Appointments**

(3) Any action required under the Regulations taken by the principal contractor and the principal designer shall not entitle the Contractor to any additional payment or any extension of time in respect of any such provision and action.

**Additional
Payment and
Extension of
Time**

(4) Not Used.

**Contractor
Property File**

SPECIAL REQUIREMENTS

77 (1) Subject to any other provision of the Contract, the Contractor shall comply with the following:

**Contractor to
Comply with
Special
Requirements**

- (i) Special Requirements in relation to Undertaker's Works

- (ii) Special Requirements in relation to Scottish Environment Protection Agency
- (iii) Special Requirements in relation to Historic Environment Scotland
- (iv) Special Requirements in relation to Openreach
- (v) Special Requirements in relation to Scottish Water
- (vi) Special Requirements in relation to Network Rail
- (vii) Special Requirements in relation to Scottish Natural Heritage
- (viii) Special Requirements in relation to Sustrans
- (ix) Special Requirements in relation to SGN
- (x) Special Requirements in relation to Scottish and Southern Energy
- (xi) Special Requirements in relation to Vodafone
- (xii) Special Requirements in relation to City Fibre
- (xiii) Special Requirements in relation to Trafficmaster

Relating to Undertakers and other Relevant Companies

all as identified in Annex 1 to Conditions of Contract.

- (2) In the event of an outbreak of animal or poultry disease occurring the Contractor shall comply with:
- (i) Legislation; and
 - (ii) The Special Requirements to Prevent the Spread of Animal and Poultry Diseases as set out in Section 2.2.3 of Annex 1 to these Conditions of Contract.

Contractor to Comply with Special Requirements Relating to Spread of Animal and Poultry Diseases

- (3) In each and every case where within the several documents forming the Special Requirements reference is made to actions by the Employer and or to information supplied or required to be supplied under the Contract by the Employer such references shall be deemed for the purposes of this Clause to be an action by the Contractor and or information supplied or required to be supplied under the Contract by the Contractor as the context of each particular case requires in relation to the Contract which shall be construed accordingly notwithstanding anything else contained in the Contract.

References to Employer and Contractor

- (4) Compliance with such Special Requirements referred to in sub-clauses (1) and (2) of this Clause shall not relieve the Contractor of any of his other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve him of his responsibility to comply with the said Special Requirements.

Unfulfilled Obligations

- 78** (1) All communications between the Contractor and Network Rail in connection with the "Special Requirements in Relation to Network Rail" this additional Clause 78 and the Contract and the Design construction, completion and maintenance of the Works shall be copied to the Engineer. Should Network Rail give an instruction or approval direct to the Contractor and/or the Contractor requests Network Rail to provide services, the cost of which is the liability of the Employer under the terms of the Contract, then the Contractor

Special Requirements in Relation to Network Rail

shall notify the Engineer as soon as practicable and in any event within 7 days in writing of any instructions approval received from Network Rail or request made to Network Rail. Any other costs of whatsoever nature incurred by the Contractor resulting from any such instruction or approval shall be at the Contractor's risk and shall be borne by the Contractor.

- (2) Subject to sub-clause (4) of this Clause, the Employer shall be liable to Network Rail for and shall reimburse Network Rail any costs and charges (including costs and charges for abortive work in arranging possessions, temporary speed restrictions and isolations) properly incurred by Network Rail in imposing speed restrictions giving possessions or occupations and the like of the track or isolations of electrical equipment providing the necessary personnel and in carrying out ancillary works.
- (3) Subject to sub-clause (4) of this Clause, the Employer shall also be liable for and defray all additional costs and charges incurred by Network Rail (certified by Network Rail's representative as such) including but not limited by reason of the following:
- (a) uneconomical use of hand signalmen lookouts and railway engineering supervisors;
 - (b) any extension of speed restrictions possessions or isolations beyond those provided in the Contract (or if none were provided as previously agreed with Network Rail) or failure to take up such restrictions possessions or isolations which is due to the default of the Contractor; or,
 - (c) as a result of any other failure of the Contractor to comply with his obligation under the Special Requirements and the other provisions of the Contract.
- (4) Notwithstanding the provisions of Clause 26(2) and the provisions of sub-clauses (1), (2) and (3) of this Clause the Contractor shall be liable for and shall reimburse to the Employer any payments made by the Employer to the Railway Infrastructure Controller (Network Rail) under the provisions of sub-clauses (1), (2) and (3) of this Clause and the other provisions of the Contract. The amounts of such payments shall be particularised and notified by the Engineer to the Contractor and shall be recoverable as sums of money due pursuant to the provisions of Clause 74 hereof.

Notwithstanding any other provisions of the Contract the Contractor shall be responsible for arranging with Network Rail for any possessions occupations and the like of the track required to undertake the Design construction completion and maintenance of the 'Works'. The Contractor shall liaise (consult and comply) with Network Rail regarding any possessions of the track that the Contractor has arranged for and then subsequently cancelled. The Employer has made no arrangements with Network Rail for any possessions, occupations and the like of the track.

Notwithstanding any other provisions of the Contract the Contractor shall be responsible for arranging (consulting and

complying) with Network Rail for appropriate Network Rail attendance relative to the Contractor's Programme. The Contractor shall liaise with Network Rail on a continuous basis to ensure that Network Rail's attendance shall be coordinated relative to the Contractor's Programme.

Notwithstanding any other provisions of the Contract the Contractor shall bear all costs associated with the cancellation by Network Rail of any prearranged Network Rail attendance.

- (5) Insofar as the Railway Infrastructure Controller (Network Rail) is prepared to grant such facilities the Contractor shall make his own arrangements with the Railway Infrastructure Controller (Network Rail) in connection with the hire of plant and the like from the Railway Infrastructure Controller (Network Rail) and for access to the Site (so far as the use of such plant access is not laid down in the Contract) and any costs and charges relating to such arrangements shall be the liability of the Contractor.
- (6) No access shall be allowed across the tracks for men or machines and alternative arrangements shall be required.
- (7) Working methods near the railway shall be in accordance with the 'Special Requirements in Relation to Network Rail'.
- (8) The type of permanent foundation piling chosen by the Contractor shall be confirmed with the Railway Infrastructure Controller (Network Rail) before he makes arrangements to begin the work.
- (9) Certain aspects of the Works near railway tracks may be undertaken only during track occupation periods. Track possessions, occupations and the like shall be arranged by the Contractor with the Railway Infrastructure Controller (Network Rail).

No provisional track possessions, occupations and the like have been arranged.

These periods shall be conditional on the Railway Infrastructure Controller (Network Rail) operating requirements and the availability of staff to supervise the work, and the Contractor shall not assume that all such periods shall be made available to him.

- (10) The Contractor shall be required to monitor continuously the line and levels of the railway tracks during and after the construction of the bridge and of the approach embankments, and to supply the surveyed results to the Railway Infrastructure Controller (Network Rail). The frequency of the surveys and their accuracy shall be as reasonably required by the Railway Infrastructure Controller (Network Rail) and may extend into the Period(s) of Maintenance.

- (11) No water from any source shall be permitted to enter the railway drainage system.

PRIVACY OF INFORMATION

- 79** The Contractor shall not give information concerning the Works for publication in the Press or on radio, television, screen or any other medium without the written consent of the Engineer. **Privacy of Information**

DATA PROTECTION ACT AND CONTRACTOR'S INDEMNITY AND WARRANTY

- 80** (1) The Contractor and the Employer shall execute the Data Processing Agreement at the same time as the Letter of Acceptance is signed. The Contractor agrees and undertakes to fully comply with the Data Processing Agreement to be entered into between the Employer and the Contractor. The Contractor agrees to indemnify and keep indemnified and defend at its own expense the Employer and the Crown against all costs, claims, damages or expenses incurred by the Employer or the Crown, or for which the Employer or the Crown may become liable due to any failure, act or omission by the Contractor or its employees or agents to comply with any of its obligations under this sub-clause including the terms of the Data Processing Agreement. **Data Protection Act: Data Processing Agreement and Contractor's Indemnity**

CONSIDERATE CONSTRUCTORS SCHEME

- 81** The Contractor shall register the Site under the Considerate Constructors Scheme and thereafter comply with the Considerate Constructors Scheme's Code of Practice in carrying out the Works. **Considerate Constructors Scheme**

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

- 82** (1) The Contractor acknowledges that the Employer is subject to the requirements of the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004, and the INSPIRE (Scotland) Regulations 2009 ("**FOI Framework**"). **Freedom of Information**
- (2) The Contractor shall:
- (i) provide all necessary assistance and cooperation as reasonably requested by the Employer to enable the Employer to comply with its obligations under the FOI Framework;
 - (ii) transfer to the Employer all requests for information under the FOI Framework relating to the Contract that it receives as soon as practicable and in any event within two working days of receipt;
 - (iii) provide the Employer with a copy of all information belonging to the Employer requested in a request for information which is in its possession or control in the form that the Employer requires within five working days (or such other period as the Employer may reasonably specify) of the Employer's request for such information; and

- (iv) not respond directly to a request for information unless authorised in writing to do so by the Employer.
- (3) The Contractor acknowledges that the Employer may be required under the FOI Framework to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Contractor. The Employer shall take reasonable steps to notify the Contractor of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Employer shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOI Framework.
- (4) The Employer may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty’s Government in Scotland or the United Kingdom, and their servants and agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Employer shall if they see fit disclose such information but are unable to impose any restriction upon the information that they provide to members of the Scottish Parliament, or members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of the Contract.

VALUE ENGINEERING

- 83 (1) Where the Contractor makes a Value Engineering proposal to the Employer offering a saving against the Tender Total, acceptance or otherwise shall be at the sole discretion of the Employer. **Value Engineering**
- (2)(i) All Value Engineering proposals by the Contractor shall include a detailed justification of said proposal and demonstration of the Value Engineering saving that would accrue to the Employer such that the Employer shall be able to give consideration to the acceptance of such Value Engineering proposal. **Information**
- (ii) Where the Engineer considers that the said proposal contains insufficient information necessary to permit such Value Engineering proposal to be given consideration by the Employer, he shall be entitled to request from the Contractor any such further information as he deems necessary.
- (iii) No later than 21 days from the receipt of any such proposal and any such further information the Engineer shall either:
 - (a) notify the Contractor that the Value Engineering proposal is accepted by the Employer and instruct the Contractor in writing to proceed to incorporate such Value Engineering proposal in the construction completion and maintenance of the Works. The proportion of such Value Engineering saving confirmed as accruing to the Employer shall be the full sum to which the Employer is entitled in respect of the saving

and no reduction of that sum shall be made by the Contractor in respect of any subsequent variation of such Value Engineering proposal; or

- (b) notify the Contractor that the Value Engineering proposal is not accepted by the Employer.
- (3) The Contractor may withdraw any Value Engineering proposal at any time prior to notification in writing by the Engineer of its acceptance by the Employer. **Withdrawal of VE proposal**
- (4) Any saving identified as a result of an accepted Value Engineering proposal shall accrue equally to the Employer and the Contractor. **Proportion of Saving**
- (5) In respect of any matters in connection with or resulting from any Value Engineering proposal, the Contractor shall not be entitled to any extension of time under Clause 44. **Delay**
- (6) Other than to take account of any share of any accepted Value Engineering savings accruing to the Contractor and the Employer, no adjustment to the Contract Price shall be made for and as a consequence of any accepted Value Engineering proposal. **No Adjustment to Contract Price**
- (7) Value Engineering proposals, if accepted by the Employer, shall be considered a "Deemed Variation" in accordance with Clause 51(1). However, the value of the reduction to the Contract Price shall be limited to the accepted Value Engineering saving accruing to the Employer as identified in this Clause 83. **VE as Deemed variation**
- (8) Notwithstanding any other provisions of this Contract the Contractor shall be responsible for; **Contractor responsible for design changes**
- (a) all necessary design; and,
- (b) the provision of all necessary drawings, specifications, calculations and other information
- arising either directly or indirectly from the adoption of any Value Engineering proposal.

84 Not used.

85 Not used.

COMMUNITY BENEFITS

- 86 (1) The Contractor shall provide community benefits as part of their obligations under this contract. These community benefits shall include but are not limited to: **Training and Employment Opportunities**
- (a) Employment opportunities
- (b) Educational and Training opportunities
- (c) Community engagement opportunities

- (d) Subcontracting opportunities for supported businesses, third sector businesses and SMEs

As a minimum the Contractor shall meet the benchmark requirements for the contract given in Specification Appendix 0/7 Table 1.

- (2) The Contractor shall institute, maintain and operate for the term of the Contract an Employment and Skills Plan (ESP) to support the Employer's Employment and Skills Strategy (EESS). The minimum requirements for the ESP shall be as identified in Appendix 0/7 of the Specification. **Compliance**
- (3) The Contractor shall be required to provide a completed ESP and detailed ESP Method Statement within 21 days of award of the Contract setting out how he intends to implement the employment and training requirements of the Employer and to deliver the ESP. The minimum requirements for the ESP Method Statement shall be as identified in Appendix 0/7 of the Specification. **Minimum Requirements**
- (4) The Contractor and any Contractor Party shall comply with the requirements of the ESP and Method Statement in accordance with the EESS.
- (5) All ESP and related reporting requirements shall be in accordance with App 0/7. **Reporting requirements**
- (6) The Contractor shall ensure that all Site-based employment opportunities (including those with Sub Contractors) are notified to job centres (including local job centres) at the time they become available.
- (7) The Contractor shall ensure that in carrying out its obligations under this Contract it complies with the following minimum requirements (derived from the Ethical Trading Initiative (ETI) Base Code) and shall use reasonable endeavours to ensure that subcontractors and suppliers of any tier comply with these minimum requirements: **Ethical Sourcing Practices**
- (a) Employment is freely chosen:
- (i) There is no forced, bonded or involuntary prison labour;
 - (ii) Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice;
- (b) Freedom of association and the right to collective bargaining are respected:
- (i) the employer adopts an open attitude towards the activities of trade unions and their organisational activities;
 - (ii) workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively;

- (iii) workers representatives are not discriminated against and have access to carry out their representative functions in the workplace; and
 - (iv) where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder the development of parallel means for independent and free association and bargaining;
- (c) Working conditions are safe and hygienic:
- (i) workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers;
 - (ii) a safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment;
 - (iii) access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided;
 - (iv) accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers; and
 - (v) the company shall assign responsibility for health and safety to a senior management representative;
- (d) Child Labour shall not be used:
- (i) There shall be no recruitment of Child Labour;
 - (ii) Children and Young Persons shall not be employed at night or in hazardous conditions; and
 - (iii) These policies and programmes shall conform to the provisions of the relevant ILO standards;
- (e) Living wages are paid:
- (i) Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income;
 - (ii) All workers shall be provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid; and
 - (iii) Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without

the expressed permission of the worker concerned. All disciplinary measures should be recorded;

- (f) Working hours are not excessive:
 - (i) Working hours comply with national laws and benchmark industry standards, whichever affords greater protection;
- (g) No discrimination is practised:
 - (i) There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation;
- (h) Regular employment is provided:
 - (i) To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice; and
 - (ii) Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, subcontracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed term contracts of employment; and
- (i) No harsh or inhumane treatment is allowed:
 - (i) Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.
 - (ii) The Contractor shall manage and monitor adherence to these requirements throughout its supply chain and it shall report any non-compliance and remedial actions to the Employer.

The Contractor is required to comply with national and other applicable law and, where the provisions of law and these provisions address the same subject, the provision which affords the greater protection should be applied.

The Contractor shall make a condition in each and every sub-contract and order for goods and services including Design services whereby sub-contractors and suppliers shall for the term of the Contract comply with the requirements of this sub-clause 86 (7).

- 87** (1) The Contractor must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall
- Blacklisting Activities**

entitle the Scottish Ministers to terminate the Contract with immediate effect.

- 88** (1) The Contractor shall ensure that on-site staff are accredited under the Construction Skills Certification Scheme or an equivalent scheme. **Construction Skills Certification Scheme or Equivalent Sub-contract Agreement**
- (2) Where the company enters into a sub-contract for the purpose of performing all or part of this Agreement the Contractor shall cause a term to be included in each such sub-contract:
- (a) which requires the sub-contractor to ensure that on-site staff are accredited under the Construction Skills Certification Scheme or an equivalent scheme; and,
- (b) in the same terms as that set out in this clause 88 (including for the avoidance of doubt this Clause 88) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.
- (3) In this clause “on-site staff” means all persons engaged by the Contractor to undertake any works or part thereof on the Site. **On-site staff**
- 89** (1) The Contractor shall ensure that all contracts with sub-contractors and suppliers which the Contractor intends to procure following the commencement date, and which the Contractor has not, before the date of this Contract, already planned to award to a particular sub-contractor or supplier, are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract. **Public Contracts Scotland**
- (2) Where a suitable business exists, the Contractor shall invite supported businesses and social enterprises to tender for any subcontracts which the Contractor intends to procure.

2.2 Annex 1 to Conditions of Contract

SPECIAL REQUIREMENTS RELATING TO UNDERTAKERS AND OTHER RELEVANT COMPANIES

2.2.1 SPECIAL REQUIREMENTS IN RELATION TO UNDERTAKER'S WORKS

General

1. Where within the Contract, Undertaker's Works are required in connection with the Design, construction completion and maintenance of the Works the Contractor shall from the Contract Date act on behalf of the Employer as the Overseeing Organisation's Agent within the meaning of Advice Note SA10/05 in respect of those Undertaker's Works.

Contractor's Obligations

2. The Contractor acting as the Overseeing Organisation's Agent in respect of the Undertaker's Works shall:
 - (i) co-operate with the Undertakers in the verification, planning and programming for the carrying out and completion of the Undertaker's Works in accordance with the Contractors, Design, construction, completion and maintenance of the Works and the Contractor's Programme having regard to the Indicative Schedule of Undertaker's Works identified in Appendix 1/16 of the Specification and any other provision of the Contract.
 - (ii) notify the Employer of any change to the Indicative Schedule of Undertaker's Works identified in Appendix 1/16 to the Specification.
 - (iii) manage, organise, supervise and secure the completion and maintenance of the Works and the Undertaker's Works in accordance with the Contractor's Programme.
 - (iv) from the Contract Date, and except as otherwise provided in the Contract, fulfil the obligations of the Employer with regard to the Undertaker's Works.
 - (v) meet with the Undertakers at least once per month for the purpose of monitoring and assessing progress of Undertakers Works. A minute of any such meeting shall be issued to the Employer and the Undertaker within seven days of any such meeting.
 - (vi) prepare a report of all such meetings which shall be issued to the Employer within seven days of the date of such meetings. The report to the Employer shall identify the current position at the date of the said meeting including but not limited to status of:
 - (a) progress and completion of Undertaker's Works;
 - (b) any delays of Undertaker's Works and the reasons therefore;
 - (c) any effect on the Contractor's Programme or the Works arising from delays in the Undertaker's Works and the reasons therefore;
 - (d) any changes to Undertaker's Works proposed;
 - (e) a recommendation by the Contractor in respect of any proposed changes and the reasons therefore;
 - (f) an assessment of the effect of any proposed changes on the Undertaker's Works and the estimated cost and time effect of the proposed changes and the reasons therefore;

SPECIAL REQUIREMENTS IN RELATION TO UNDERTAKER'S WORKS (Continued)

- (g) all notifications to the Employer in respect of the Undertaker's Works; and
 - (h) a schedule of all Milestones achieved, or part achieved.
- (vii) procure from Undertakers all necessary information to allow the Contractor as Contractor to properly assess the sequence and timing of events for the purpose of preparation and submission of the Contractor's Programme.
- (viii) when requesting the Employer's consent to the placing of an Order with an Undertaker, or to the agreement of the nature, scope or route of proposed Undertaker's Works or to the agreement of any costs or expenses proposed or estimated or claimed by Undertakers, in accordance with Clause 27 of the Conditions of Contract, provide to the Employer such information or documentation as the Employer considers is necessary to determine whether or not to so consent including, but not limited to, details of:
- (a) the identifying reference of the diversion(s) concerned;
 - (b) the start and end points of the location of the diversion;
 - (c) a general description of the diversionary works, including their route;
 - (d) the nature and length of the apparatus involved;
 - (e) the length, number and type of any ducts or poles;
 - (f) the estimate timescale for completion of the diversionary works;
 - (g) the proposed cost of any labour, plant and materials; and
 - (h) the availability of any cost sharing arrangement or discount in costs.

The Contractor shall maintain a file of all notices served whether served by the Contractor or the Employer, correspondence sent and received (including all letters or pro forma documents sent or received in accordance with the guidance contained in Advice Note SA10/05), drawings, estimates, programmes and all other documents relevant to the management and otherwise of Undertakers Works. A copy of the file shall be sent to the Engineer during the first week of each calendar month for the duration of the Contract.

Undertakers Works

3. The Contractor shall not impede, prevent or disrupt the Undertaker's Works and to the extent that any claim is made by an Undertaker in respect of any delay, disruption, expense or loss arising from an act of the Contractor, the Contractor shall save harmless and indemnify the Employer from and against all demands, damages, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Payments to Undertakers

4. The Employer shall at all times remain solely responsible for making payment to Undertakers of any sums properly due to them by the Employer by way of contributions, reimbursements for improvements, sharing of costs and other financial arrangements under the
- (i) NRSWA, the
 - (ii) Code of Practice thereunder,
 - (iii) the Town and Country Planning (Scotland) Act 1997 and
 - (iv) the Roadworks (Sharing of Cost of Works) Regulations 2003.

and the Contractor shall have no authority to make any such payments to Undertakers for or on behalf of the Employer.

2.2.2 SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY

SCOTTISH ENVIRONMENT PROTECTION AGENCY

PREVENTION OF POLLUTION FROM CIVIL ENGINEERING CONTRACTS:

SPECIAL REQUIREMENTS

Version 13 July 2017

Purpose

The purpose of this document is to enable those planning engineering or construction work to reduce the risk of pollution of the Water Environment. Engineering or construction work carried out in or in the vicinity of inland waters now requires authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments. The Contractor shall contact the local SEPA office to discuss any requirements under these regulations.

This document contains a definitive list of clauses for incorporation into civil engineering contractual documents. Further guidance to assist those in the civil engineering industry on how to minimise the environmental impact of their activities can be found in SEPA's "Guidance for Water Pollution Prevention from Civil Engineering Contracts" and the Pollution Prevention Guideline Notes (produced by SEPA, the Environment Agency and the Environment and Heritage Services Northern Ireland). Please note that a Glossary of Terms is also attached at the end of this document.

General

The Contractor shall identify all parts of the water environment as defined in the Water Environment and Water Services (Scotland) Act 2003 which may be affected by the works and the permanent or temporary discharge points to these watercourses. The water environment includes wetlands, rivers, lochs, transitional waters, (estuaries), coastal waters and groundwater. However the engineering regime of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments applies to engineering activities in inland waters and wetlands only. Inland waters include rivers, lochs and canals.

1. When the Contractor is planning the works, agreement should be sought from SEPA on pollution prevention measures, overall approach and emergency procedures for all construction stages. This should cover: i) the protection of the water environment and sensitive locations by planning site drainage, including the run-off from borrow pits, soil heaps, haul roads and water crossing places, and
 - (i) the design and application of measures (including land acquisition to provide adequate mitigation of any pollution from the project. Contamination of the water environment can lead to serious water quality problems and adversely affect flora and fauna. Therefore, for this and other reasons, the Contractor could be prosecuted under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments. SEPA's formal authorisation for discharge may be required and, in extreme cases, the Engineer or the Engineer's Representative may have to suspend work until pollution prevention measures have been carried out to SEPA's satisfaction.
2. In the event of spillage of any polluting substances and/or pollution of the water environment, the Contractor must notify SEPA and the engineer immediately by telephone. Contact telephone numbers can be found at the end of this document.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

3. Where required, the Contractor shall submit to the Engineer his proposals for maintaining the free passage of fish at all times in any part of the water environment likely to be affected by the works, and these shall be submitted to the local District Salmon Fishery Board for their approval (where applicable).
4. Materials which may cause pollution shall not be stored near the water environment, nor shall they be stored in such a manner that they may fall or be carried into the water environment. All refuse and debris arising from the site in the vicinity of the water environment shall be collected and removed as required, in accordance with the Duty of Care, so that none may fall or be carried into the water environment.
5. In the event that temporary sanitation cannot be connected to the public foul sewerage system, the Contractor shall apply to SEPA for authorisation for any discharge in compliance with the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments.
6. The use of construction plant in water represents a clear pollution risk and must only be considered as a last resort. In the event of there being no feasible alternatives (i.e. land-based construction plant), the plant must be cleaned thoroughly beforehand (principally to remove oil) and must be checked thoroughly for the presence of any potential oil leaks. SEPA should be consulted for advice on other appropriate pollution prevention measures.
7. Where a waterbody transects the construction site, the contractor shall agree the location with SEPA. Options to allow works to continue may include the following but any works impacting the watercourse will require an authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments:
 - (i) diverting the waterbody around the working area;
 - (ii) temporarily culverting the waterbody through the working area; and
 - (iii) blocking, diverting or overpumping the waterbody, which shall be limited to a period to be agreed with SEPA and where appropriate, with the District Salmon Fishery Board.
8. Where construction plant has to cross a waterbody, SEPA would expect that temporary bridges or culverts would be installed, together with suitable mud splash guards. General Binding Rule 6 in the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments should be followed if applicable.
9. Cut-off drains must be installed to intercept uncontaminated surface water and thereby prevent it from entering the working area. Agreement shall be reached with SEPA regarding its satisfactory discharge.
10. Construction plant washing facilities (including wheel washes) shall be designed to operate on total recirculation wherever possible. Where this cannot be achieved, it is advisable to collect the effluent produced for discharge to the foul sewer (this is likely to require the formal approval and consent of the Water Authority) or for off-site disposal via a licensed waste contractor. In the event of these options not being available, discharges to the water environment can only take place with adequate settlement and oil removal prior to discharge. The Contractor will require SEPA's authorisation for such discharges.
11. Borehole drilling or other ground investigations can produce a polluting effluent which may require treatment before being discharged to the water environment. An authorisation may be required for such a discharge, SEPA must be advised by the Contractor of the measures to be taken to prevent pollution before the commencement of any such operations that are liable to give rise to an effluent.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

Earthworks

12. Temporary storage of topsoil and subsoil in heaps and stockpiles created after land stripping should be located as far away as possible from any drains or waterbodies to prevent any collected materials from either falling or being integrated with run-off caused by rain into the water environment. They shall be seeded or bound as soon as is practicable after deposition to ensure quick stabilisation and cut-off drains shall be provided to intercept run-off from the stockpiles.
13. Drainage from borrow pits, quarries or spoil areas must be treated to the satisfaction of SEPA (e.g., by use of settlement lagoons) before discharge to any drain or waterbody. The contractor may require SEPA's authorisation for such discharges.
14. Only inert and non-toxic material shall be used to:
 - (i) backfill drainage trenches;
 - (ii) backfill burn crossings;
 - (iii) infill area of standing water; and
 - (iv) infill areas where contact with groundwater is possible.
15. Where in-river bunding is required and the geology of the river bed is appropriate, sheet piling shall be used for the in-river bund. However, where native material is subject to excess scouring, imported impervious material such as puddle clay or sand bags shall be used for the formation of in-river bunds after consultation by the contractor with SEPA. Any material placed within the channel or flood plain during the construction of temporary works shall be removed by the contractor as soon as its function has been fulfilled in a manner which minimises pollution.
16. The contractor shall stockpile and replace on completion of the works any bed material necessarily excavated from a waterbody during construction of the works. The contractor shall not remove any bed material from the water environment for use in construction.
17. Surface water or groundwater from excavations or other parts of the working area must not be pumped nor be allowed to issue directly into the water environment or drains but should receive treatment to ensure removal of pollutants in accordance with SEPA requirements before discharge to the water environment. For water pumped out of mines and quarries, or for civil engineering works and, which are discharged into the same aquifer, advice should be sought from SEPA on the possible implications of the groundwater regime of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments.

Oil Pollution

18. The contractor must ensure that oil is stored well away from any drain or waterbody (normally not less than 10 metres). Oil storage tanks must be located on an impermeable base and be surrounded by an impervious bund with no surface water outlet. The bund must be capable of retaining at least 110% of the volume of the tanks.
19. Valves and couplings connected to oil storage tanks must be located within the bund and delivery hoses should be fitted with trigger type handles suspended back within the bund after use. Valves and trigger fill handles must be kept padlocked when not in use.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

20. The transportation of fuel and oil across the site in drums or other containers must be avoided as far as practicable. Where this is unavoidable, extreme caution must be taken to avoid spillages or leaks. The contractor shall hold adequate stocks of oil absorbent and containment materials (e.g., sand or earth) and/or commercially available booms on site. The contractor must ensure that relevant staff are familiar with the use of these materials.
21. Surface water, together with any material which accumulates within the storage tank bund, must be removed by means of a manually controlled positive lift pump. Oil contaminated water must be disposed of at an appropriate oil recovery plant licensed tip or incineration plant.
22. The contractor shall ensure that personnel are nominated as being responsible for the supervision of the filling of oil storage tanks, vehicles, etc., and that a "nominated person" is available at all appropriate times.
23. Mobile fuel and lubricant servicing units must be provided with appropriate quality delivery hoses with trigger-type nozzles. These vehicles, when not in use, must be parked in a secure area within an impermeable bund. Vehicles and plant must not be refuelled near drains or waterbodies.
24. Ideally, oil powered pumps, generators and similar equipment should be positioned at least 10 metres from any waterbody or drain. The disposal of waste oil/oily waters from the drip trays must be by the methods outlines in clause 22. The use of this type of equipment in water should only be used as a last resort – see clause 7.
25. The contractor shall take all reasonable measures to ensure the security of their oil storage facilities from acts of wilful damage or vandalism.

Concrete Works

26. Cement, grout and unset concrete (unless specialist products as approved by SEPA are used) must not be allowed to enter the water environment. Prevention may be achieved by diverting the water environment away from the working area with fixed shuttering or sandbags or by damming the flow upstream and pumping it beyond the working area. The inlet to the pump should ideally be screened. Residual cement or concrete must be removed from the original channel before the waterbody is returned to it.
27. The contractor must ensure that drainage from excavations where concrete is being, or has been, newly poured shall not be pumped or allowed to issue directly into the water environment without appropriate treatment and the prior approval of the Agency.
28. Tools and equipment must not be washed in the water environment. If it is necessary to wash equipment on site, this must be done well away from the water environment and washwater must not be discharged directly into the water environment or road drains without appropriate treatment.
29. The contractor must ensure that if concrete has to be sprayed in the vicinity of the water environment (e.g., bridges, retaining walls, etc.) suitable protective sheeting is provided to prevent rebounded or windblown concrete from entering the water environment. Rebound material must be cleared away before the sheeting is removed.
30. The direct discharge from any concrete batching plant to the water environment will not be permitted. Subject to the approval of SEPA, such discharges may be directed to a soakaway.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)**Miscellaneous**

31. The contractor shall take suitable precautionary measures, as agreed with SEPA, to prevent any material from falling into the water environment when concreting, bitumen spraying, blast cleaning or painting operations are being carried out above the water environment.
32. The contractor should note that any approval by SEPA of the contractor's proposals will not relieve the contractor of his responsibilities with respect to any pollution which may occur. SEPA will not be held liable for any damage or pollution resulting from operations on the site.
33. The contractor shall provide to SEPA in advance of the commencement of the works, the names of the responsible personnel on site, together with 24 hour contact telephone numbers.

The contact details for SEPA's Aberdeen Office are:-

Address: [REDACTED]

Telephone: [REDACTED]

SEPA can be contacted 24 hours-a-day on an Emergency Hotline number 0800-80-70-60.

In addition to the preceding special requirements, the Scottish Environment Protection Agency provide the following guidance document.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

SCOTTISH ENVIRONMENT PROTECTION AGENCY

PREVENTION OF POLLUTION FROM CIVIL ENGINEERING CONTRACTS: GUIDELINES FOR THE SPECIAL REQUIREMENTS

Version 13 July 2017

1. Purpose

These Guidelines are supplementary to the Scottish Environment Protection Agency ("SEPA") "**Special Requirements**", which are a definitive list of clauses for incorporation into contractual documents. These guidelines are intended to be used for advice only and shall be taken as an exhaustive list of SEPA's Special Requirements.

Engineering or construction work carried out in or in the vicinity of inland waters now requires authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments. The Contractor shall be required to contact the local SEPA office to discuss any requirements under these regulations unless another contact office or person shall have been identified by the Employer in the Contract.

Further guidance to assist those in the civil engineering industry on how to minimise the environmental impact of their activities can be found in the range of Pollution Prevention Guidance Notes (produced by SEPA, the Environment Agency and the Environment and Heritage Service Northern Ireland). Note that the Contractor shall be fully responsible for the Design, construction and maintenance of pollution prevention facilities on the construction site or adjacent land. The Agency's formal authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments must be obtained by the Contractor before the commencement of any engineering activities that fall under the requirements of these regulations.

2. The Water Environment (Controlled Activities) (Scotland) Regulations 2011

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 were passed by the Scottish Parliament on 15 March 2011. These regulations mean that from 31 March 2011 it shall be an offence to undertake any of the following activities without a CAR authorisation:

- (i) Discharges to the water environment (including discharges to land)
- (ii) Abstractions from the water environment
- (iii) Impoundments (dams and weirs) of surface waters or wetlands
- (iv) Engineering works in inland surface waters and wetlands (not in coastal or transitional waters)

The water environment is defined in the Water Environment and Water Services (Scotland) Act 2003. The water environment includes wetlands, rivers, lochs, transitional waters, (estuaries), coastal waters and groundwater.

3. Guidelines for the special requirements for the prevention of pollution from civil engineering contracts

3.1 Pre-Construction Requirements

- (i) It shall be essential that the Contractor contacts SEPA at the planning stage prior to submitting his Final Tender Total for the Design, construction, completion and maintenance of the Works. Contractors shall be required to establish with SEPA

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

the type of pollution prevention measures that shall be required for the Design, construction, completion and maintenance of the Works, as certain part of such Works may call for the acquisition of additional land area requirements, over and above that needed for construction, in order that appropriate treatment facilities may be installed (if required). Moreover, the Contract may be suspended at the cost of the Contractor until facilities have been installed to the satisfaction of SEPA. If pollution occurs, the Contractor could be prosecuted under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments.

- (ii) In addition to consulting with SEPA at an early stage, Contractors shall contact riparian owners, fishery and angling concerns in the vicinity of and downstream of the proposed Works so that the interests of these parties, which are completely separate to those of SEPA, shall be protected.

3.2 Responsibility

The Contractor shall be solely responsible for pollution prevention during the Design, construction, completion and maintenance of the Works and, in some instances, for a specified time following the completion of the Works. This responsibility shall include the actions of any third party who is contracted or otherwise involved in the Contract. If a Contractor shall be exempted from third party responsibility within the Contract, they shall be required to notify SEPA of this arrangement prior to construction commencing with a copy of such written notice also copied simultaneously to the Employer.

3.3 Main Polluting Sources of the Water Environment

There are a number of ways in which civil engineering contracts may lead to the pollution of the water environment and these can generally be categorised as follows:

- (i) the discharge or entry into the water environment of contaminated site run-off or pumped contaminated surface/groundwater
- (ii) direct disturbance of the beds of the water environment by excavation or fording of watercourses
- (iii) loss of oil from machinery, during delivery or from storage areas
- (iv) cement and cement wash from batching plants, storage areas and other areas where cement grout or concrete is being applied. Guidance on how to minimise the risks of pollution from civil engineering works can be obtained in the various PPGs referred to in Section 4 of these Special Requirements. These Special Requirements focus on minimising the risks of soil erosion.

3.4 Preventing Soil Erosion

- (i) Erosion is the process whereby soil is transported by wind and/or water. Erosion does occur naturally but usually at a very slow rate. Activities which alter the landscape, such as road building, house construction and industrial site developments, can greatly accelerate this process. The removal of established vegetative cover can lead to the loss of large quantities of soil particles to watercourses which can then cause significant pollution of water. The discharge of eroded soil may not only result in pollution but can also induce long term damage to fish stocks and to the general biology of a watercourse. Fine solids may kill fish by coating their gills, or may reduce growth rates and resistance to disease. In addition, accumulation of sediment on the bed will adversely affect the biological diversity of a watercourse, thereby reducing the abundance of food available to fish. The successful development of fish eggs and larvae may also be

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

inhibited. It is essential that the degree of land disturbance and subsequent erosion is controlled and kept to a minimum. Therefore, any earth moving Works or other similar operations giving rise to contaminated drainage must be carried out in accordance with the BSI Code of Practice for Earth Works, BS6031:1981. Before any discharge of contaminated site drainage is made, prior agreements must be made with SEPA regarding the quality and quantity of effluent to be discharged. Where appropriate, SEPA may grant a temporary authorisation to discharge treated site drainage to the water environment, following the submission of an application for such authorisation.

- (ii) Sedimentation is the settling out of soil particles which have been transported by wind and/or water. The rate of deposition depends primarily on particle size and run-off flow rates. Heavier particles, such as gravel and sand, settle out quicker than fine particles, such as clay, which may become electrostatically charged and stay suspended in water for long periods, contributing to water turbidity and discolouration.
- (iii) An “**Erosion and Sediment Plan**” shall be prepared by the Contractor for each site and fully discussed with SEPA prior to the commencement of any mechanical works. Notwithstanding any other provision of the Contract, such a plan shall form part of the Contractor’s Environmental Management Plan. Such Erosion and Sediment Plan shall include the following:
 - a) pollution risk assessment for the site.
 - b) planning and design of appropriate control measures.
 - c) management of the system, including the safe disposal methods for settled sludge and dirty water.
 - d) contingency planning and emergency procedures. This should include relevant telephone numbers (e.g. SEPA Emergency Hotline number on page 5, downstream landowners and water users etc.) and record the availability of equipment to carry out any emergency remedial work.
- (iv) Principles of control are based on the protection of the soil surface from rainfall and run-off, and on containing eroded soil particles on-site. Fine particles can be very difficult to contain once they have been mobilised and the best way to control the generation of sediment is to prevent erosion from taking place. The following principles shall be incorporated into the planning, Design, construction completion, maintenance and management of any measures to control erosion and sedimentation:
 - a) obtain all necessary agreements and consents before starting work.
 - b) Schedule construction activities to minimise the area and period of time that soil will be exposed. Account shall be taken of the time of year and, in the case of sensitive operations, the weather forecast. Limit the area of construction.
 - c) Stage the project where practicable for example in 100 metre lengths, with complete rehabilitation of each stage before progressing to the next. Only those areas which can be fully developed in a construction season shall be worked.
 - d) Intercept run-off from undisturbed areas surrounding a site (for example by using cut-off trenches) and divert this around the works. Temporary, erosion proof, outfalls shall be utilised where necessary. Isolate the works. If

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

- drainage water is clean, keep it clean. Work in dry areas by diverting/pumping the water body around the working area or alternatively by forming temporary culverts through the working area, after obtaining agreement from SEPA.
- e) Keep run-off velocities low and reduce erosion by the provision of appropriate drainage, buffer strips of vegetation, and short slopes with low gradients. Removal of vegetative cover increases the volume and rate of run-off.
 - f) If some erosion is unavoidable, then contain resultant suspended particles on site. Plan and implement control measures before undertaking earthworks.
 - g) Stabilise disturbed areas as soon as construction has finished. This may be achieved through structural methods, utilising synthetic fabrics, hydroseeding and other quick stabilisation/re-vegetation techniques as necessary.
 - h) Inspect all control measures regularly for structural defects and associated leakage. If not properly maintained, some control measures may cause more damage than they prevent. Regular inspections shall also be undertaken to ensure that the water environment has not become polluted. The frequency of inspections shall be increased at times when the risk of pollution is high, such as during and after heavy rainfall.
 - i) Ensure that developers, Contractors and others involved in earthworks which could pollute the water environment are aware of their statutory responsibility not to cause water pollution or damage habitats. All such persons shall be aware, and shall make their employees aware, of the likely causes and consequences of environmental pollution and shall be familiar with any control measures and emergency procedures to be deployed.
 - j) Develop and maintain a contingency arrangement to deal with environmental pollution incidents (as part of the Erosion and Sediment Control plan). A sketch plan showing the location of the drainage system shall be prepared and equipment shall be available for emergency situations to plug drains, dam ditches, excavate catchpits or retain oil spillages by placing oil absorbent materials or wooden scum (or baffle) boards across watercourses.
 - k) Be aware that sediments commonly act as transporting agents for other contaminants. Usually the finer grained sediments are prominent in this regard, as they take longer to settle than coarser particles. Consequently, the standard techniques for controlling erosion and sedimentation may not be effective in limiting the off-site transfer of contaminants. Thus, other measures may be necessary, such as tankering off-site for suitable disposal to a licensed landfill site or the use of chemicals to promote settlement prior to discharge.
 - l) Where necessary, provide settlement ponds or lagoons to remove the sediment which will invariably be present in site drainage (although minimisation of the amount of erosion must always be the first priority). Such facilities will also be required for the drainage from borrow pits and any on-site quarrying activities. The design and satisfactory operation of settlement ponds or lagoons depends on a number of factors, including the anticipated flow rate of the drainage, the settleability of the soil particles, influence of

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (Continued)

wind and wave action and the quality which the discharge must meet in terms of SEPA's requirements. Developers/contractors shall consider long term rainfall figures for the area where construction is taking place as this varies significantly in different regions and is an important criterion when determining the size of settlement ponds/lagoons. The location of settlement ponds/lagoons on natural watercourses shall be avoided and, where practical, the location of treatment facilities for the construction phase shall be considered with a view to these facilities being utilised as method/treatment systems for any permanent drainage from the site. Discharges to the water environment from treatment facilities will require the formal authorisation of SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and their amendments.

- m) Provide temporary culverts and/or bridges to enable vehicles to cross waterbodies and thus prevent disturbance of the river bed.
- n) Locate stockpiles and spoil heaps as far away as possible from waterbodies and drainage ditches.

3.5 Miscellaneous

- (i) Blast furnace slag is not considered suitable for use in shot blasting adjacent to the water environment (such as bridge works).
- (ii) The demolition of old concrete structures such as culverts can give rise to potentially toxic dusts and care shall be taken to prevent these from entering the water environment.

4. References

- (i) PPG2: Above Ground Oil Storage Tanks
- (ii) PPG4: Disposal of Sewage Where No Mains Drainage is Available
- (iii) PPG5: Works In, Near, or Liable to Affect Watercourses
- (iv) PPG6: Working at Construction and Demolition Sites
- (v) PPG8: Safe Storage and Disposal of Used Oils
- (vi) PPG13: High Pressure Washers and Steam Cleaners
- (vii) PPG18: Managing Fire Water and Major Spillages

The contact details for SEPA's Perth Office are:-

Address: [REDACTED]

Telephone: [REDACTED]

SEPA can be contacted 24 hours-a-day on an Emergency Hotline number 0800-80-70-60.

2.2.3 SPECIAL REQUIREMENTS IN RELATION TO HISTORIC ENVIRONMENT SCOTLAND

1. Definitions

- 1.1 **Archaeological Contractor/Consultant** - means an archaeological organisation with access to professionally qualified staff with appropriate knowledge, experience and skills, and with a track record of successful contract completion.
- 1.2 **Archaeological Reports** - means all the archaeological reports produced during the scheme's Environmental Assessment process, in compliance with procedures for assessing and mitigating impact on the cultural heritage set out in the Design Manual for Roads and Bridges Volume 11. The nature and specification of archaeological reports are set out in Historic Environment Scotland's published **Archaeological Policies and Associated Papers** and, where appropriate, their more recent up-dates as **Operational Policy and Archaeological Procedure Papers**.
- 1.3 **Desk Research** - means the desk-based survey of existing archaeological records held by national and local archives plus the study of additional historic maps, other readily available historic documents and all available aerial photographs, both low level obliques and high level verticals, in order to determine the nature, significance and extent of the recorded archaeological resource of the area to be affected by the Works.
- 1.4 **Environmental Assessment Process** - refers to the statutory procedures required in accordance with EC Directive 85/337 as amended by Directive 97/11/EC. The standard methodology for addressing impact on the Cultural Heritage in trunk road schemes is set out in the Design Manual for Roads and Bridges Volume 11.
- 1.5 **Field Research** - means the use of standard archaeological field techniques including field walking, geophysics and trial trenching to build upon and augment the findings of the Desk Research and ensure that, as far as possible, the full archaeological resource and potential of the area to be affected by the Works is understood.
- 1.6 **Contractor's Named Archaeologist** - means the archaeologist appointed directly by the Contractor to undertake works within the Site.
- 1.7 **SPP** refers to the Scottish Planning Policy (2014) which sets out the national planning policies which reflect Scottish Ministers' priorities for operation of the planning system and for the development and use of land. Policy for the historic environment can be found in paragraphs 135 – 151. See: <http://www.gov.scot/Resource/0045/00453827.pdf>
- 1.8 **SHEP** – refers to The Scottish Historic Environment Policy (2011) document which sets out Scottish Ministers' policies for the historic environment, provides policy direction for Historic Environment Scotland and provides a framework that informs the day-to-day work of a range of organisations that have a role and interest in managing the historic environment. The SHEP has not been updated to reflect the creation of Historic Environment Scotland or the associated changes in process (it should however be noted that an update is due to be issued in May 2016), it should therefore be read in conjunction with the current historic environment legislation and regulations (<http://www.historic-scotland.gov.uk/index/heritage/policy/shep.htm>), as well as the [Historic Environment Circular 1](#). See - <http://www.historic-scotland.gov.uk/historic-environment-circular-1.pdf>
- 1.9 **Managing Change Guidance Notes** refers to the advice provided by Historic Environment Scotland on how to apply the policies set out in the SHEP and SPP. See - <http://www.historic-scotland.gov.uk/managingchange>
- 1.10 **Planning Advice Note 2/2011** - refers to the advice on good practice on the treatment of archaeological remains in development set out in Planning and Archaeology published by the Scottish Government in July 2011.

SPECIAL REQUIREMENTS IN RELATION TO HISTORIC ENVIRONMENT SCOTLAND (Continued)

- 1.11 **Planning Permission** - means statutory consent under the Town and Country Planning (Scotland) Act 1997.
- 1.12 **Scheduled Monument** - means monument of national importance protected under the Ancient Monuments and Archaeological Areas Act 1979.
- 1.13 **Topsoil Strip** - means the removal of all superficial deposits to the satisfaction of Contractor's Named Archaeologist in accordance with the requirements of Transport Scotland.
- 1.14 **Topsoil Strip Monitoring** - means the archaeological supervision of the Contractor's removal of topsoil, with agreed provision for means of removal and the time to be allowed for archaeological investigation of any features found during this process.
- 2. Topsoil Strip Monitoring**
- 2.1 The Contractor shall appoint a Named Archaeologist whose duties shall include, but not be limited to, monitoring topsoil stripping. To enable proper monitoring:
- (i) the Contractor shall ensure that the Contractor's Named Archaeologist is notified in writing of the programme for topsoil stripping at least 14 working days before commencement of this activity;
 - (ii) the Contractor's Named Archaeologist shall liaise directly with Transport Scotland Historic Environment Specialist. All communications between the Contractor and Transport Scotland's Historic Environment Specialist shall be through the Contractor's Named Archaeologist.
- 2.2 To facilitate the archaeological monitoring work the Contractor shall ensure that top-soiling procedures are conducted as follows.
- (i) As far as possible vehicles removing topsoil shall not track over the subsoil surface, but work away from the subsoil surface.
 - (ii) The topsoil shall be removed completely: residual patches of topsoil or temporary bunds may mask archaeological deposits which will require to be removed by archaeological personnel, with cost implications.
 - (iii) Construction plant used for topsoil removal shall use smooth blades as toothed blades disturb the subsoil surface, making identification of archaeological subsoil features more difficult.
- 2.3 The Contractor shall allow the Contractor's Named Archaeologist sufficient and reasonable time for the recording of archaeological features revealed during topsoil monitoring. The following procedures and timescales will apply.
- (i) If minor features are located they will require simple archaeological excavation, note taking, drawing and photography. These activities will incur only minor delays to the Works. Where necessary the Contractor shall assist the Contractor's Named Archaeologist by employing Plant present on the Site.
 - (ii) If somewhat larger features are discovered, the progress of the Works may have to be delayed in the area of the features, to allow a sufficient level of archaeological recording to take place. In such cases the Contractor's Named Archaeologist is authorised to stop the Works, at least within a defined area, for no more than one hour. The Contractor's Named Archaeologist shall obtain the authorisation of the Engineer for any longer delay.

SPECIAL REQUIREMENTS IN RELATION TO HISTORIC ENVIRONMENT SCOTLAND (Continued)

- (iii) Where substantial remains may be located greater delays may be required. The Contractor's Named Archaeologist will require agreement in writing from Transport Scotland's Historic Environment Specialist and the Engineer before incurring longer stoppages. (Note for information: in such cases the Contractor's Named Archaeologist will ensure that he/she has a small back-up team of additional trained archaeologists ready for rapid response to such needs.)

3. Unexpected Discoveries/Finds

- 3.1 Should unexpected finds be encountered on the Site during the course of the Works (over and above any finds made during topsoil monitoring), the Contractor shall consult and comply with Transport Scotland's Historic Environment Specialist's requirements for the treatment of such finds.
- 3.2 Should such finds result in Transport Scotland's Historic Environment Specialist requiring the Contractor's Named Archaeologist to undertake further works on Site, the Contractor shall co-operate with the Contractor's Named Archaeologist. Where necessary the Contractor shall assist the Contractor's Named Archaeologist by employing Plant present on the Site.
- 3.3 In the event of unexpected finds, the Contractor shall contact the Engineer within 24 hours.

4. Discovery of Human Remains

- 4.1 Any human remains which are encountered must, by law, be dealt with differently from other finds, and must initially be left *in situ* and the relevant authorities (the Police, Procurator Fiscal) must be informed of their discovery within 24 hours. Excavation procedures relating to human remains will comply with Scots Law as set out in Historic Environment Scotland's published **Operational Policy Paper 5: The Treatment of Human Remains in Archaeology (2006)**. See - <http://www.historic-scotland.gov.uk/the-treatment-of-human-remains-archaeology.pdf>

NOTE: In principle an archaeologist should always be present during the examination of any human remains encountered, even where the examination is by the notified legal authority. Typically very few accidental discoveries of human remains are those of recent murder victims. Most are of archaeological interest only. Unfortunately, it is not uncommon for sites to have been disturbed either by the finder or by the police in the conduct of their investigations before archaeologists are informed of the discovery, and this can result in the loss of archaeological information.

2.2.4 SPECIAL REQUIREMENTS IN RELATION TO BT OPENREACH

- 1 In this special requirement the following terms shall have these meanings assigned to them:-
- a) 'Company' means Openreach – a BT Group Company
 - b) 'Company Representative' means the staff of Openreach, or its authorised representatives or Agents
 - c) 'Apparatus' means all boxes, cabinets, poles and plant including any associated cabling and/or ducting owned by Openreach.

2 All works in the public highway are subject to the New Roads and Street Works Act 1991, and the Promoter of the work is legally responsible to bear the cost of safeguarding Apparatus. The "highway" includes carriageway, verges, footpaths, etc.

3 Before commencing any work, or moving of heavy plant or equipment over any portion of the site the contractor shall confirm details of Apparatus, owned, leased or rented by the Company, within the site, with the Company Representative, who can be contacted for free on site assistance during office hours, prior to commencement of works:-

E-mail : [REDACTED]

Seven working days notice is required.

(Office hours: Monday to Friday 08:00 to 17:00)

Further information is available at:

<http://www.ournetwork.openreach.co.uk/locating-our-network/letting-us-know-about-streetworks.aspx>

Compliance with the above requirements does not relieve the Contractor of any of his obligations under the Contract.

- 4 Apparatus maps are also available, for further information please go to:
<http://www.ournetwork.openreach.co.uk/locating-ournetwork/maps-by-email.aspx>
- 5 Where such details show that the works or the movement of plant or equipment may endanger the Apparatus, the Contractor must give the Company Representative at least 7 days notice of the date on which it is intended to commence such works or the movement of plant or equipment in order that the presence of any sub-surface Apparatus can be indicated by markers to be supplied by the Company and placed by the Contractor under supervision of the Company Representative. The Contractor shall ensure that all Apparatus, particularly surface running cable, is adequately protected from damage and the Engineer shall approve such protective measures.
- 6 In the event of a Company marker being disturbed for any reason it shall not be replaced other than in the exact position and to its former depth unless the repositioning is carried out at the direction and under the supervision of the Company Representative.

SPECIAL REQUIREMENTS IN RELATION TO BT OPENREACH (Continued)

- 7 The Contractor shall take particular care in relation to the protection of Apparatus, where such Apparatus includes the presence within the site of optical fibre and/or co-axial cabling. The Contractor shall make every effort to avoid the disturbance of the Company's network which, if damaged, can prove costly to reinstate. The Contractor shall make every effort to avoid the disturbance of Apparatus more than is absolutely necessary for the completion of the works in accordance with the Contract.

When excavating, or backfilling around Apparatus, the Company Representative shall be given adequate notice, which should be not less than 7 days, of the Contractor's intentions in order that he may supervise the works. The Contractor should note that the normal depth of cover for Apparatus and ducts is as follows:-

- a) in footways 350mm, which is to be maintained; and
- b) in carriageways 600mm, which is to be maintained.

Where the 350/600mm depth of cover cannot be maintained the Contractor shall carry out the instructions of the Company Representative for the protection of the Apparatus. Where the required depth of cover cannot be maintained over cabling, such cables may have to be diverted.

- 8 All excavation adjacent to Apparatus is to be carried out by hand until the exact extent and/or location of Apparatus is known. Mechanical borers and/or excavators shall not be used within 1.0 metre of Apparatus or 2.0 metres of any pole without the supervisory presence of a Company Representative. To prevent any movement of Apparatus during excavation, complete shuttering shall be used as directed by the Engineer if:-
- a) excavation is deeper than the depth of cover of adjacent Apparatus
 - b) excavation is within 1.0 metre of Apparatus in stable soil
 - c) excavation is within 5.0 metres of Apparatus in unstable soil

If for completion of the works the Contractor intends using any of the following: -

- a) pile driving equipment within 10.0 metres of Apparatus
- b) explosives within 20.0 metres of Apparatus
- c) laser equipment within 10.0 metres of Apparatus

- the Contractor shall advise the Company Representative, in writing, in order that any special protective measures for the Apparatus affected may be arranged.

- 9 All Company manhole, joint box and/or other access points and chambers within the site shall be kept clear and unobstructed. Access for vehicles, winches, cable drums and/or any further equipment required by the Company for the maintenance of its Apparatus must be maintained at all reasonable times. The Contractor should particularly note the footway type chambers are not specified for carriageway loading and will need to be adequately protected and/or demolished and rebuilt under supervision of a Company Representative where such chambers are likely to be placed at risk, either temporarily or permanently, from the movement of plant and/or equipment on the site. The Company Representative shall be given reasonable access to all Apparatus and chambers when required. Where OPENREACH installs Apparatus during the works this new Apparatus shall be treated as existing Apparatus for the purpose of these Special Requirements.
- 10 For Frame and Covers that necessitate a change in level please contact the local office. If you wish to provide recessed frames and covers they will have to be supplied by the Company's agreed supplier. The Contractor must be prepared to supply and install such frames and covers in future, and must supply names of who will be liable for future maintenance.

SPECIAL REQUIREMENTS IN RELATION TO OPENREACH (Continued)

- 11 In the event of any damage whatsoever to Apparatus the Contractor must immediately inform BT Openreach and report the occurrence as follows:-

Call Openreach fault reporting on: 0800 0232023

WARNING

Entry into all BT Openreach underground structures is prohibited to all unauthorised personnel.

2.2.5 SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH WATER

General

- 1 Scottish Water (SW) supplies water, drainage and sewerage services to the population of Scotland.
- 2 In these Special Requirements the following terms shall have the meanings assigned to them:-
 - a) 'Authority means the Roads Authority (RA) initiating the roads development.
 - b) 'Undertaker' means Scottish Water (SW).
 - c) 'Undertaker's Representative' means a member of staff of Scottish Water or its authorised representative or agent.
 - d) The Contractor shall be assumed to be appointed by the Roads Authority (or Transport Authority) for the purposes of designing, constructing and/or managing the roads/transport scheme).
- 3 At all times the contractor shall consider potential risks to SW apparatus and shall take measures to protect such apparatus, in line with best industry practice.
- 4 Before commencing any work involving the movement of heavy plant or equipment over any portion of a site, the Contractor shall confirm details of all underground plant within the site belonging to SW with the appropriate SW representative for the area and service involved. If necessary, trial holes shall be excavated to confirm position of SW apparatus. NB Trial holes shall only be done with the expressed permission of Scottish Water and in accordance with its DOMS process (Distribution Operations and Maintenance Strategy).
- 5 Where such details show a conflict between with SW pipes or plant and the Contractor's works, the Contractor shall give Scottish Water adequate notice of the date on which it is intended to commence such work or movement of plant and equipment in order that the presence of buried plant can be confirmed and indicated by markers.
- 6 The Contractor's method statement and safe system of work shall state clearly what measures are to be used to avoid damaging Scottish Water's apparatus and these shall be submitted to SW for consideration. The Contractor shall ensure that SW's plant is protected from damage, but if any damage should occur SW shall be notified immediately. Scottish Water's DOMS process will be followed when working adjacent to water mains. No works will take place without written acceptance by Scottish Water.
- 7 The Contractor shall ensure that all method statements and risk assessments that are done which impact on SW apparatus are site specific, appropriate and comply with Scottish Water's Water for Scotland 2015 Third edition and/or Sewers for Scotland 2015 Third edition. The Contractor shall submit completed method statements and risk assessments to SW for information and for comment and, for water apparatus, shall comply with SW's DOMS procedures.
- 8 Any damage to Scottish Water's apparatus shall be reported *immediately* to Scottish Water using the SW Call Centre number 0800 0778778.
- 9 All costs due to damage to SW apparatus shall be charged to the third party that caused the damage. Costs charged may include any operational costs that were incurred by SW in order to mitigate loss of service and inconvenience to SW customers and hence these costs may be significant.

Specific Issues

The following specific requirements shall also be adhered to whilst working in the area of Scottish Water's apparatus:-

1. Any water or sewer design proposals shall be in accordance with Water for Scotland 2015 Third edition or Sewers for Scotland 2015 Third edition.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH WATER (Continued)

2. All surface apparatus belonging to Scottish Water including manhole covers, toby covers, valve covers, gratings etc shall be identified on site in advance of the works commencing.
3. On completion of the works the contractor shall again identify the apparatus and check it is still accessible and functional and shall take immediate remedial action if that is not the case.
4. The level of covers shall be adjusted to suit the new scheme. Alternatively covers shall be replaced or renewed as appropriate to suit the new roads scheme.
5. Before any work is carried out in the vicinity of pipelines, trial holes shall be carefully excavated by hand as required to confirm the position of the pipe.
6. Assistance in tracing SW apparatus can normally be arranged by SW's local representative, who shall be contacted before any trial holes are excavated.
7. Allow, in general, at least 300 millimetres clearance horizontally and vertically round Scottish Water's pipes in order to allow future repair and maintenance work to be made to the pipe.
8. The Contractor shall provide appropriate consolidation on reinstatement in order to reduce the effect of subsidence on SW apparatus.
9. Mechanical excavation shall not be used at the vicinity of SW's apparatus. Machinery working can be used but only if agreed by SW.
10. Fencing may be required at specific points to exclude access by mechanical plant except at designated crossing points where suitable protection to the main shall be provided. Bridging works may be required at pipe crossings.
11. SW shall be consulted before a decision is made to use explosives within 400m of a water main.
12. Once exposed, a water main will be treated with the utmost care to prevent damage from any source. It shall be supported as necessary at all stages of excavation and back filling, to the satisfaction of SW. Only short lengths shall be exposed at any time with only one joint being exposed. Scottish Water's DOMS process will apply.
13. In the event of a marker being disturbed for any reason, it shall not be replaced other than in the exact position and to its former depth, unless the repositioning is carried out at the discretion and under the supervision of SW's Representative.
14. Written permission shall be obtained from Scottish Water before water is obtained from the Public Supply and in particular the use of fire hydrants is permitted but only if a Scottish Water licensed standpipe shall be used.
15. SW shall be consulted before any piling is carried out within 15 metres of a water main. Any piling works adjacent to SW apparatus shall be carried out to the recommendations of BS 5228-2:2009 and to SW local requirements. Scottish Water reserves the right not to accept any piling works (or other works) that may pose an unacceptable risk to SW apparatus.
16. Damage to a water main, however slight, and even if only to the coating of a pipe, shall be reported immediately to the Undertaker and work suspended and men withdrawn as appropriate until an opportunity to assess the extent of any repair necessary is given. Contingency arrangements should already be in place as part of DOMS process.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH WATER (Continued)

17. If traffic is required to cross over a water main on site then the crossing arrangements shall be designed by the contractor and submitted to SW for consideration and acceptance. Such arrangements shall be designed so as to limit loading and settlement on the pipe and to limit risk of damage to the asset to acceptable levels. To avoid doubt, it should be noted
18. that the final responsibility for the crossing point design lies with the contractor. DOMS process will apply to proposed road crossings.
19. Water mains are normally laid at between 750 millimetres and 1500 millimetres cover but larger mains often cannot follow minor variations in the ground contours readily and may be shallower or deeper than this.
20. Sewer pipe depths can vary from 750mm to over ten metres and present significant risks. The primary risks relate to:
 - a) Falling from heights due to deep manholes.
 - b) Noxious fumes and gases within the sewer system.
21. Under no circumstances must anyone enter a sewer on site and manhole covers should not be removed unless under SW's strict control arrangements.
22. No work shall be done to the sewer or system without the expressed permission of Scottish Water by means of the issue of an Access Transfer Certificate.
23. Directional drilling or any other type of non open cut installation of services shall not take place near Scottish Water plant or mains without written permission being given.
24. Where other apparatus or services are to be laid alongside a water main, a minimum separating distance shall be agreed on site. All trenches crossing the line of a water main shall be kept as near a right angle to the axis of the main as possible (i.e. shortest possible crossing).
25. As part of the DOMS procedures and as part of the Contractor's method statement, contingency arrangements may be required on site to cover the possibility of a SW asset being rendered inoperable by the contractor. Contingency arrangements should include
 - a) Contact names and details
 - b) Contingency options
 - c) Emergency procedures
26. Where it is necessary to lay new apparatus across and above a water main an appropriate distance shall be left between the bottom of the new apparatus and the top of the main. This shall be agreed with SW.
27. Where apparatus shall pass below a water main the trench shall be excavated by hand. Care will be taken so as to avoid undermining the water main (or sewer) and proposals shall be submitted by the contractor and agreed with SW.
 - a) 48 hours notice of intention to back-fill under, over or adjacent to a water main shall be given to SW who then may arrange a representative to advise as to the suitability and consolidation of back-fill material over the pipeline.
 - b) Backfill material shall be suitable excavated or imported inert material. Material shall be agreed with SW.
28. Where apparatus shall pass below a water main the trench shall be excavated by hand. Care will be taken so as to avoid undermining the water main (or sewer) and proposals shall be submitted by the contractor and agreed with SW.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH WATER (Continued)

29. 48 hours notice of intention to back-fill under, over or adjacent to a water main shall be given to SW who then may arrange a representative to advise SW as to the suitability and consolidation of back-fill material over the pipeline. Backfill material shall be suitable excavated or imported material and shall be agreed with SW in advance.

Planting and Environmental Issues

- 1 Design of planting near water mains will be in accordance with Water for Scotland.
- 2 The design of landscaping shall be undertaken at the same time as the design of the water mains so that the impact of tree roots on water mains can be considered. A water main shall not be located closer to trees/bushes/shrubs than the canopy width at mature height, except where special protection measures are provided. A tree shall not be planted directly over water mains or where excavation onto the water main would require removal of the tree. The following shallow rooting shrubs are generally suitable for planting close to water mains:
- Berberis candidula; (Paleleaf barberry)
 - Berberis julianae; (Wintergreen barberry)
 - Ceanothus burkwoodii; (Californian lilac 'Burkwoodii')
 - Cotoneaster dammeri; (Bearberry cotoneaster)
 - Cotoneaster skogholm; (Cotoneaster x suecicus, 'Skogholm')
 - Cytisus varieties or Sarothamnus; ((Common or Scotch) Broom)
 - Euonymus japonicus; (Japanese spindle)
 - Euonymus radicans; Variety of Euonymus (Fortune's spindle or wintercreeper)
 - Mahonia varieties; can be included in the genus Berberis, most common name is M. aquifolium (Oregon grape)
 - Potentilla varieties; most varieties are types of cinquefoil. Also includes Common tormentil, silverweed and barren strawberry
 - Skimmia japonica; (Skimmia)
 - Spiraea japonica; (Japanese spirea or Japanese meadowsweet)
 - Veronica varieties; (Speedwell)
 - Viburnum davidii; (David viburnum)
 - Viburnum tinus; (Lauristinus)
- 3 All waste produced as a result of the works shall be disposed of in a manner which would not cause harm to the environment. All appropriate licences/consents shall be obtained prior to temporary/permanent storage and transfer of waste.
- 4 Environmental impact assessments shall be carried out in accordance with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 and shall include but not be limited to:
- identifying any environmentally and archaeologically sensitive sites;
 - describing the impact of work (if any) on these sites; and
 - listing design actions taken to reduce the impact.
- 5 The Authority or Contractor shall obtain and provide to Scottish Water consents/licences under the Water Environment (Controlled Activities) (Scotland) Regulations 2011, for any watercourse crossings.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH WATER (Continued)**Other**

- 1 **The Contractor shall not allow material to enter the sewerage system or discharge to the sewerage system without the express permission of Scottish Water.**
- 2 In the event of any damage whatsoever to Water or Sewerage apparatus the Contractor can immediately inform **CUSTOMER SERVICES AT SCOTTISH WATER, [REDACTED]** (Ask for Service Request Desk).
- 3 The Contractor should liaise with one or more of the following:-
 - a) Asset Impact team at [REDACTED] (For all NRSWA major Works projects in the first instance).
 - b) Scottish Water's local staff
 - c) SW Asset Delivery staff.
 - d) Other SW employees as appropriate.

2.2.6 SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL

In addition to the Special Requirements the Contractor shall comply with the requirements contained within the Network Rail document entitled: 'Asset Protection Outside Parties, Guidance Document Requirements for Construction Work on or near Railway Operational Land by Outside Parties'.

INTRODUCTION

The railway is a particularly hazardous environment. The danger from train movements, overhead power lines, buried cables and electrified rails at ground level shall not be underestimated. The Industry's safety policy and safety management systems require the enhancement of some safety Legislation and the following Special Requirements in Relation to Network Rail indicate areas where the legislative requirements are strengthened.

These requirements apply to all types of work on Network Rail land i.e. surveying, inspection, construction and maintenance.

The Contractors attention is particularly drawn to Conditions of Contract Clause 78.

1. DEFINITIONS

In these Special Requirements, the following terms shall have the meanings assigned to them.

- (a) 'Contractor' means any person or company to whom a contract for the whole (or any part) of the Works is let and for whom the Other Party is the employer.
- (b) 'Isolation' means planned arrangements for a predetermined period for the interruption of traction electricity between defined locations.
- (c) 'Network Rail Company Standards' means a standards document issued by Network Rail for its own use (as amended by Network Rail from time to time) in relation to the Railway as a whole which applies to the performance of the Works.
- (d) 'Network Rail's Representative' means a person duly authorised to act on Network Rail's behalf.
- (e) 'Other Party' means a party which has contractual obligations to Network Rail under a works agreement in respect of the design, construction and maintenance of a bridge over or under the Railway Infrastructure.
- (f) 'Possession' means planned safety arrangements which control or prevent the normal movement of rail traffic on the Railway Infrastructure between defined locations and for a pre-determined period.
- (g) 'Railway' means the Railway Infrastructure, Network Rail's activities in carrying out the operation, maintenance and replacement of the Railway Infrastructure, and traffic on the Railway Infrastructure.
- (h) 'Railway Infrastructure' means Network Rail's infrastructure and operational track.
- (i) 'Safety Personnel' means the personnel required to implement safe working practices on or about the Railway Infrastructure.
- (j) 'Service' means electricity cables, gas pipes, water pipes (including piped sewage), other pipelines or signalling telecommunication plant cables and equipment irrespective of owner.
- (k) 'Temporary Speed Restriction' means a planned restriction on the speed of rail traffic between defined locations for a specific period of time.
- (l) 'The Works' means the design and construction, and where the Other Party is obliged to carry it out, the maintenance of a bridge over or under the Railway Infrastructure and all tasks incidental thereto.'

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)

(m) 'Work Site' means any lands and other places, on, under, in or through which the Works are to be executed.

2. ACCESS**2.1 Written Authority**

Before any activity is undertaken in connection with the Works requiring access to land in the ownership of Network Rail, written authority shall be obtained from Network Rail's Representative for access to such land including the conditions under which such access will be granted.

2.2 Procedures for Safe Access to Railway Property

Robust procedures shall be established and maintained to ensure safe access for all persons to land in the ownership of Network Rail in connection with the Works and such procedures shall be submitted to Network Rail's Representative for written approval prior to access being granted.

2.3 Trespass

No person shall be permitted to access land in the ownership of Network Rail beyond the agreed limits of the Work Site or access route for the duration of the Works.

2.4 Crossing the Railway Tracks

No person shall cross or convey constructional plant or materials across or along any railway track unless special arrangements are made and written consent obtained from Network Rail.

Where public rights of way exist over occupation or accommodation level crossings or bridges, these crossings shall only be used in the way that they are intended to be used by the public unless special arrangements are made and written consent obtained from Network Rail.

Only in very exceptional circumstances will the provision of a temporary level crossing be permitted. Where Network Rail is prepared to accept the provision of a temporary level crossing for constructional traffic or public use sufficient time shall be allowed for obtaining the appropriate approvals and the period of notice required by Network Rail for making the necessary arrangements for carrying out the work.

3. RISK MANAGEMENT**3.1 Robust Procedures for Safe Access and Safe Working Practices**

Systems, procedures and working practices that avoid risk to the Railway arising from the Works and that protect those persons involved in the execution of the Works from risks arising from the Railway shall be developed and implemented in conjunction with the Contractor's Health and Safety Plan, as defined in the Construction (Design and Management) Regulations 1994 (as amended from time to time). These shall be submitted to Network Rail's Representative for written approval prior to the Works being undertaken.

Specific training (i.e. Personal Track Safety Training) and competency requirements apply to persons who work on the Railway Infrastructure or require access on or near the line. The training and competence requirements for the Works shall be agreed in writing with Network Rail's Representative before access is allowed.

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)

3.2 Services

A full survey shall be undertaken to ascertain the location and nature of all Services within the Work Site or access route(s). All necessary protective measures shall be incorporated and implemented to the satisfaction of the Network Rail's Representative.

The degree of existing protection provided to Services on or about the Railway Infrastructure can vary. Therefore Services shall not be interfered with or moved unless authorised by Network Rail's Representative.

Additional precautions shall be taken by the Contractor to establish the existence, position and location of any buried Services which may be present before any excavation, or the driving of objects into the ground, is undertaken. All necessary precautions shall be taken by the Contractor to avoid damaging buried Services when excavating, surcharging and driving objects into the ground.

Should any unknown or unexpected Service be discovered or uncovered during the Works, the works in the vicinity of the Service shall stop, ownership shall be established, Network Rail and the owner of the Service shall be informed and appropriate precautions for protection shall be taken prior to recommencing the works.

Any Service not diverted shall be supported, maintained, protected as necessary and kept in working order in its existing location.

Where temporary or permanent service diversions are necessary a method and routing specification shall be agreed with the Network Rail's Representative. The service provided shall be maintained at all times unless otherwise agreed with Network Rail's Representative.

Any equipment (Cable Avoiding Tools (CATS) for example) utilised to establish the position of buried Services shall be of a type approved by Network Rail for use on the Railway Infrastructure.

3.3 Use of Explosives

Explosives shall not be used on or about the Railway Infrastructure without the prior written agreement of Network Rail. Evidence of full compliance with all current Legislation relating to the acquisition, storage, keeping and use of explosives shall be provided.

3.4 Protection to Railway Equipment

Special protection to prevent damage to the tracks, signal and telecommunication equipment and all other railway equipment and contamination of track ballast during the execution of the Works shall be designed, constructed, maintained and removed on completion of the Works or as otherwise directed by Network Rail's Representative.

3.5 Confined Spaces

A considerable number of confined spaces exist on or about the Railway Infrastructure. In carrying out the Works all employers and contractors shall fully comply with the requirements of the Confined Spaces Regulations 1997 and the associated Approved Code of Practice.

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)**4. PROGRAMMING OF THE WORKS****4.1 Possessions, Isolations and Temporary Speed Restrictions**

The use of Possessions, Isolations and Temporary Speed Restrictions shall be avoided to minimise disruption to railway traffic. If the need for Possessions, Isolations and Temporary Speed Restrictions cannot be avoided then they shall only be carried out on dates and at times agreed in writing by Network Rail's Representative.

The notice periods for booking of Possessions, Isolations and Temporary Speed Restrictions are dependent upon the duration and location of the Works. At the earliest opportunity advice shall be sought from Network Rail's Representative as to the requirements for booking Possessions, Isolations and Temporary Speed Restrictions.

4.2 Initial Programme

An initial programme for the Works shall identify the key construction activities and timing constraints and indicate when Possessions, Isolations and Temporary Speed Restrictions are being sought.

4.3 Programme Development

The Contractor's Programme shall be developed taking account of comments from Network Rail's Representative and shall be reviewed from time to time as required. Network Rail may cancel or alter the dates and times of any agreed Possessions, Isolations and Temporary Speed Restrictions at short notice, if this proves necessary because of the overriding operational requirements of the Railway. If this occurs alternative arrangements will be made as soon as the situation permits.

5. METHOD STATEMENTS

Method statements shall include a comprehensive step-by-step account of how the relevant part of the Works will be executed (incorporating where necessary maintenance and subsequent removal) including:

- (i) Working times
- (ii) Access routes and location plan
- (iii) Plant usage and backup (including equipment and operator certificates)
- (iv) Superintendence, inspection and monitoring arrangements
- (v) Temporary works and as appropriate supported by:
 - (i) Design statements
 - (ii) Drawings and cross sections
 - (iii) Site and Ground Investigation reports including geotechnical interpretive reports
 - (iv) Calculations
 - (v) Settlement, noise, vibration predictions
 - (vi) Design check certificates
 - (vii) Risk mitigation measures.
 - (viii) Storage, movement and clearance of materials and equipment
 - (ix) Temporary or permanent diversion of services

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)

- (x) Earthing and bonding arrangements near electrified equipment
- (xi) Use of Surveying Equipment

Method statements for works to be carried out in Possessions, Isolations or Temporary Speed Restrictions shall also include a detailed programme for each work item, which shall identify critical path activities and include contingency planning e.g. standby plant and equipment etc.

Method statements shall be submitted for full consideration, comment or approval by Network Rail's Representative in sufficient time to allow for comments to be incorporated and revised proposals to be resubmitted as necessary.

6. SITE MANAGEMENT**6.1 Site Representation**

At the request of Network Rail, the Contractor or the Other Party shall appoint a full time senior representative at the Work Site during the course of the Works.

6.2 Training

Prior to the commencement of and during the Works, familiarisation training and briefings shall be given to everyone who has access to the Work Site. Records of training and briefings are to be retained on the Work Site for inspection. Certain activities carried out during the Works may require railway specific training. These activities will be identified and notified to the Contractor by Network Rail's Representative when the initial programme of works is submitted.

6.3 Contact Names and telephone numbers

Prior to commencement of work on the Work Site Network Rail's Representative shall be provided with a list of names and telephone numbers for personnel responsible for organising remedial action in the event of an emergency on the Work Site when the Work Site is unattended.

6.4 Accommodation for Network Rail's Representative

Serviced accommodation for the use of Network Rail's Representative shall be provided in line with the requirements of and to the satisfaction of Network Rail.

6.5 Advertisements

Advertisements shall not be displayed on or about land in the ownership of Network Rail without the prior written consent of Network Rail.

6.6 Working Time

The Railway (Safety Critical Work) Regulations 1994, and the supporting guidance documents, place strict limitations upon the hours that can be worked by persons who undertake Safety Critical Work as defined by the regulations. During the Works contractors who have employees carrying out Safety Critical Work shall be able to demonstrate compliance with the regulations.

6.7 Knowledge and Understanding of English

Supervisory staff on the Works shall have sufficient knowledge of English (both spoken and written) to understand and relay safety information, instructions and training to all personnel.

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)**6.8 Alcohol and Drugs**

All personnel engaged in the Works shall comply with Network Rail's current Policy on Alcohol and Drugs. A copy of this will be provided by the Network Rail's Representative.

6.9 Clothing and Personal Protective Equipment

All persons engaged in the Works shall wear high visibility clothing of an approved colour, type and design (including retroreflective strips) acceptable to Network Rail. The personnel protective clothing shall be worn correctly and kept in a clean condition.

6.10 Removal of Contractor's Employees

Network Rail may object to and require the immediate removal from the Work Site of any person thereon who in the opinion of Network Rail's Representative is not in a fit condition to carry out their duties, or is liable to endanger their own health and safety or that of others. Such persons will not be permitted further access to the Work Site without the written agreement of Network Rail's Representative.

6.11 Registers and Certificates

All registers, site diaries and certificates relevant to the Works shall be available for inspection by Network Rail at the Work Site or other location agreed with Network Rail's Representative.

6.12 Screens, Hoardings and Lights

Temporary screens, hoardings, guard rails, barriers, fans, protective sheeting, fencing, lighting, etc., necessary to ensure the safety and protection of the Railway, the Works and all persons in the vicinity of the Works shall be designed, constructed, maintained and modified as appropriate and removed when no longer required in accordance with agreed method statements and shall not affect signal sighting, places of safety or affect or impair the vision of train drivers.

6.13 Notifications of Accidents to Network Rail

All accidents and occurrences causing damage to property or potentially affecting the safe working of the Railway; together with all Reportable Injuries and Dangerous Occurrences as defined in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time) shall be reported to Network Rail.

Details of all such events shall be recorded in a format agreed with Network Rail's Representative and a copy sent to Network Rail within 24 hours of any such event.

6.14 Storage and Clearance of plant equipment and materials

All plant equipment and materials shall be kept safe and secure when not in use and shall be located so as to avoid opportunity for trespass or vandalism on or directed against the Railway or land in the ownership of Network Rail.

7. WORKING METHODS NEAR THE RAILWAY**7.1 Use of Plant and Equipment Adjacent to the Railway Infrastructure**

No construction plant, equipment or materials shall be used or handled in such a manner that in the event of mishandling or failure they come within a vertical plane 3.0 metres from the nearest edge of the nearest rail on which trains may run or, on a station platform, within 3.0 metres of the platform edge unless previously proposed in a method statement which has been accepted by Network Rail's Representative. (refer to paragraph 8.3.1).

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)

7.2 Stability of Track

Excavations near the Railway Infrastructure shall be in accordance with agreed method statements and not commence until all measures required to monitor and maintain the stability of the track or structure have been implemented and Network Rail's Representative has indicated that there is no further objection to proceeding with the excavation work.

7.3 Emergency Action

A detailed procedure for dealing with emergencies relating to the Worksite shall be produced in consultation with Network Rail's Representative. This procedure shall be accepted in writing by Network Rail before work starts and shall be reviewed and updated as circumstances vary. Key actions shall be set out on a poster to be prominently displayed in locations to be agreed with Network Rail's Representative. These shall include the method of stopping trains in the event of an incident that could affect the safety of trains or persons and, in the case of an electrified line, how to arrange to have the current switched off.

All staff and operatives shall be made fully conversant with this procedure. Auditable checks shall be undertaken at intervals agreed with Network Rail's Representative to monitor this understanding and evidence thereof shall be maintained on site and available for inspection by Network Rail's Representative.

7.4 Rail Traffic During a Possession or Isolation

During a Possession it may be necessary for engineers trains or on-track machines to pass through the Work Site by prior arrangement. This will necessitate the temporary clearance of the railway track and cessation of those activities that could affect their passage or the safety of personnel on or near the line.

8. ELECTRIFIED RAILWAYS

8.1 Electric Traction Equipment

Attention is drawn to the presence in some areas of electric traction equipment associated with either overhead line equipment above and at track level or third or fourth conductor rails at track level. Either system carries a potentially lethal electric current and the close proximity to this equipment can cause death or severe injury.

Warning notices acceptable to Network Rail shall be erected in prominent positions agreed by Network Rail's Representative.

All requirements as advised by Network Rail as to the earthing and bonding (or electrical segregation) of metalwork and foil covered sheet materials shall be complied with.

8.2 Robust Procedures for Safe Access and Safe Working Practices

Further robust procedures (in addition to those referred to in paragraph 2.2) shall be established and maintained to ensure safe access for all persons to the Railway Infrastructure and safe working practices where the Railway Infrastructure is electrified. These procedures shall be submitted to Network Rail's Representative for written approval prior to the Works being undertaken.

8.3 Precautions

Electric traction equipment is charged at high voltage and unless Isolation and permit to work arrangements are in force shall be treated as being live at all times and the following precautions shall be observed: -

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL (Continued)

8.3.1 Overhead Line Equipment

Work shall not be carried out, cranes or other plant erected, operated or dismantled or materials stored within the prohibited space which is that space within a radius of 3.0 metres of the live overhead equipment together with anywhere vertically above this space.

The figure of 3.0 metres used in determining the prohibited space shall be increased by the length of any tool, equipment or material being handled. However, work on the track, platforms, walkways and the like below the overhead equipment is permitted without special precautions provided that tools, equipment or materials are not at any time raised above head height.

Long objects, which shall include but not be limited to, pipes, scaffolds, poles, ladders or long handled tools or any object of such length that if carried vertically could infringe on the prohibited space shall be carried horizontally below head height.

Electrically conductive surveying equipment shall not be used within 3.0 metres of any overhead line equipment or any rail.

Any disturbance of or attachment to any equipment forming part of the electric traction system shall only be carried out with the full consent of Network Rail.

8.3.2 Third or Fourth Rail Electrification

Work in the vicinity of third or fourth rail electrification will involve the provision of special protection or isolations to the equipment.

Electrically conductive surveying equipment shall not be used within 3.0 metres of any rail including electrified third rail.

8.4 Protective Screens

At the sole discretion of Network Rail's Representative it may be appropriate for protective screens adjacent to overhead line equipment or third /fourth rail electrification to be provided to enable certain works to continue without Isolations being required.

8.5 Crash Decks

At the sole discretion of Network Rail's Representative it may be appropriate for crash decks to be provided to enable certain works to be carried out above the Railway without Possessions or Isolations being required.

8.6 Temporary Access Structures

At the sole discretion of Network Rail's Representative it may be appropriate for a temporary access structure above the overhead line equipment to be provided to permit continued working without Isolations being required.

8.7 Erection and Removal of Screens and Platforms

Erection, inspection, maintenance and removal of screening or platforms or access structures shall be carried out under the protection of Isolations and Possessions unless otherwise agreed by Network Rail.

2.2.7 SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH NATURAL HERITAGE

The Contractor shall take cognisance of the environmental importance of any area affected by the Works and shall comply with all relevant Legislation.

The Contractor shall consult with Scottish Natural Heritage in this regard and take all reasonable steps to accommodate their recommendations and provide access to the site for Environmental monitoring.

Contact Details:

Contact: [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED]

Address: [REDACTED]

2.2.8 SPECIAL REQUIREMENTS IN RELATION TO SGN

Special requirements for the above project affecting Intermediate Pressure (I.P.) SGN pipelines:

1. Prior to works commencing it will be necessary for SGN to communicate the requirements for safe working practices when working near pipelines and to provide contact details for any enquiries.
2. The location, line and depth should be confirmed by hand dug trial holes. No mechanical excavation should be carried out within 3.0m of the gas main.
3. The line of the main should be marked out to avoid crossing with construction plant. If the main is to be crossed, suitable protected crossing points must be put in place over the gas main after discussions with SGN.
4. Supplementary documents and HSE Guidance:
 - a) Scotland Gas Networks Guidance "General Safety Measures to Avoid Injury and Damage to Gas Plant".
 - b) SGN Safety Advice - Valves
 - c) HSE Guidance HSG47 "Avoiding Danger from Underground Services".

Contact Details:

Network Officer

Contact: [REDACTED]

Mobile: [REDACTED]

Email: [REDACTED]

Special requirements for the above project affecting Low Pressure (L.P.) SGN pipelines:

5. The location, line and depth should be confirmed by hand dug trial holes. No mechanical excavation should be carried out within 0.5m of the gas main.
6. The line of the pipeline should be marked out to avoid crossing with construction plant. If the main is to be crossed, suitable protected crossing points must be put in place over the gas main after discussions with SGN.

Any suspected damage to pipes or gas escapes should be reported immediately to 0800 111 999.

Initial Contact Details: [REDACTED]

Mobile: [REDACTED]

Email: [REDACTED]

2.2.9 SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH AND SOUTHERN ENERGY

Special Requirements in Relation to Scottish and Southern Energy – Distribution and Transmission

All works subject to SSE terms and conditions and methodology, landowner / legal consents from third parties and the following;

HSE Documents:

- (a) HSG47 Avoiding danger from underground services
- (b) GS6 - Avoiding danger from overhead power lines

Contact Details:

Contact: [REDACTED]

Address: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

2.2.10 SPECIAL REQUIREMENTS IN RELATION TO VODAFONE**Special Requirements in Relation to Vodafone Apparatus**

All works subject to Vodafone terms and conditions and methodology, landowner / legal consents from third parties and the following;

HSE Documents:

- (a) HSG47 Avoiding danger from underground services

Vodafone operates an annual network freeze where no diversion can be completed for a period of approximately 4 weeks in December and January. The Contractor shall consult with Vodafone to confirm exact dates to avoid any impact on programme.

Contact Details:

Contact: [REDACTED]

Address: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

2.2.11 SPECIAL REQUIREMENTS IN RELATION TO CITY FIBRE

Special Requirements in Relation to City Fibre Apparatus

All works subject to City Fibre terms and conditions and methodology, landowner / legal consents from third parties and the following;

HSE Documents:

- (a) HSG47 Avoiding danger from underground services

Contact Details:

Contact: [REDACTED]

Address: [REDACTED]

Tel: [REDACTED]

2.2.12 SPECIAL REQUIREMENTS IN RELATION TO TRAFFICMASTER

Special Requirements in Relation to Trafficmaster Apparatus

1. In these Special Requirements, the following terms shall have the Meanings assigned to them:
 - a) 'Company' means: Trafficmaster Ltd
 - b) 'Company's Representative' means the Infrastructure Maintenance Manager or Designated Staff of the said 'Company' defined at 1.a) of these Special Requirements or its' Authorized Representatives and/or Agents.
 - c) 'Apparatus' means all surface or sub-surface equipment and plant including any associated cabling and/or ducting owned, leased or rented by the said 'Company' defined at 1.a) of these Special Requirements.

2. Before commencing any work or moving heavy plant or equipment over any portion of the site, the contractor shall confirm details of the Apparatus within the site with the Company's Representative, who can be contacted at the following offices:

Name: [REDACTED]

Address: [REDACTED]

Tel: [REDACTED]

3. Where such details show that the works or the movement of plant or equipment may endanger any Apparatus the Contractor shall give the Company's Representative at least two months written notice, detailing how the works will affect apparatus, of the date on which it is intended to commence such works or the movement of plant or equipment in order that the presence of any sub-surface Apparatus, particularly surface running cabling, is adequately protected from damage and such protective measures shall be to the satisfaction of the Company's Representative.

4. In the event of a Company marker being disturbed for any reason it shall not be replaced other than in the exact position and to its former depth unless the repositioning is carried out at the direction and under the supervision of the Company's Representative.

5. The Contractor shall take particular care in relation to the protection of the Apparatus, where such Apparatus includes the presence of cameras and equipment boxes. The Contractor should particularly note that damage to such Apparatus is extremely disruptive to the Company network and costly to reinstate. The Contractor shall make every effort to avoid the disturbance of Apparatus more than is absolutely necessary for the completion of the works in accordance with the contract.

6. In the event that the planned works will result in a need for Apparatus to be removed, the Contractor must provide the Company with at least one months' notice in order to prepare the Apparatus for removal by the Company's Representative. In each case details of the planned works, including time scales, must be submitted to the Company in order to minimize disruption of the Company network.

7. When excavating, moving or backfilling around Apparatus, the Company's Representative shall be given adequate written notice, which shall not be less than one week, of the Contractors intentions in order that he may supervise the works. The Contractor should note that the normal depth of cover for Apparatus and ducts is as follows:

- a) In carriageways 600 mm, which is to be maintained.
- b) In footways 450mm, which is to be maintained.

Where the 600/450 mm depth of cover cannot be maintained the Contractor shall carry out the instructions of the Overseeing Organization for the protection of Apparatus and such actions that follow from the Overseeing Organization's instruction shall be supervised by the Company's Representative. Where the required depth of cover cannot be maintained over cabling, such cables as are affected shall be enclosed and protected in UPVC ducts to be supplied by the Company as directed by the Company's representative.

With regard to excavation in the vicinity of any Apparatus and ducts the Contractor shall have particular regard to the possibility of reduced cover and the encountering of Apparatus and ducts of cover less than that given at a) and b), above.

8. All excavation adjacent to Apparatus shall be carried out by hand until the exact extent and/or location of Apparatus is known. Mechanical borers and/or excavators shall not be used within 1.0 metres of Apparatus without the supervisory presence of the Company's Representative. To prevent any movement of Apparatus during excavation, complete shuttering shall be used as directed by the Overseeing Organization if:
 - a) Excavation is deeper than the depth of cover of adjacent Apparatus.
 - b) Excavation is within 1.0 metres of Apparatus in stable soil.
 - c) Excavation is within 5.0 metres of Apparatus in unstable soil.

If the after the completion of the works the Contractor intends to use any of the following:

- i.) Pile driving equipment within 10.0 metres of Apparatus.
- ii.) Explosives within 20.0 metres of Apparatus.
- iii.) Laser equipment within 10.0 metres of Apparatus.

9. The covers to Company Apparatus shall only be opened by means of appropriate keys obtained from the Company's Representative and under the direct supervision of the Company's Representative. No employee of the Contractor or any sub-contractor employed by the Contractor shall enter any Apparatus of the Company unless under the supervision of the Company's Representative. The Company's Representative shall be given reasonable access to all Apparatus and Chambers when required.
10. In the event of any damage whatsoever to the Apparatus, the Contractor shall immediately inform the Company, the Overseeing Organization and (if required) the Emergency Services.
11. Compliance with the above requirements shall not relieve the Contractor of any of his obligations under the contract.

2.3 Annex 2 To Conditions of Contract

FORM OF BOND AND UNDERTAKING

A90/A96 HAUDAGAIN IMPROVEMENT

BOND AND UNDERTAKING

by

To be inserted
(hereinafter referred to as the “**Guarantor**”)

to

The Scottish Ministers
(hereinafter referred to as the “**Employer**”)

WHEREAS THE SCOTTISH MINISTERS of [REDACTED] (hereinafter referred to as the “Employer”) and.....*insert name of Contractor*.....*insert address of Contractor* (hereinafter referred to as the “Contractor”) have entered into a construction contract (hereinafter referred to as “**the Contract**”) for the Design Construction Completion and Maintenance of the A90/A96 HAUDAGAIN IMPROVEMENT (hereinafter referred to as “**the Contract**”)

AND WHEREAS under the terms of the Contract the Contractor has agreed with the Employer to furnish a guarantee by an insurance company or bank or other acceptable Surety up to the Maximum Value (as hereinafter defined) in consideration for the early release by the Employer to the Contractor of retention monies which the Employer would otherwise be entitled to retain pursuant to Clause(s) 60(5) of the Contract from the date of execution of this Guarantee until the date of the issue of the Maintenance Certificate as defined under the Contract.

NOW THEREFORE it is agreed as follows:

1. We, [**Name of surety co.**] (hereinafter referred to as “the Guarantor”) do hereby guarantee to the Employer, by way of independent engagement, the due and correct performance by the Contractor of its obligations and liabilities to the Employer under the Contract up to a maximum aggregate value of GBP.....**insert value equal to 3 percent of Final Tender Total** (referred to herein as “**the Maximum Value**”).

2. We bind ourselves to pay to the Employer, as our own debt, on receipt of the Employer’s first written demand such sum or sums of money as the Employer may claim as due to the Employer by the Contractor, this however up to the Maximum Value current at the date of receipt by the Guarantor of such demand only.

3. The variation, amendment, extension or suspension of the Contract or the giving of time by the Employer or any indulgence or forbearance by the Employer in enforcing its obligations either under the Contract or under this Guarantee or any other indulgence, concession or arrangement granted, made or entered into by the Employer shall not in any way prejudice our obligations under this Guarantee to the Employer, in whole or in part, pursuant to the terms thereof.

4. Notwithstanding Clauses 2 and 3 hereof, the Maximum Value of this Guarantee shall be reduced in accordance with the provisions of Clause(s) 60(6) as follows;
 - (i) to GBP.....**insert amount** [being the reduced amount on the issue of the Completion Certificate];

 - (ii) to GBP.....**insert amount** [being the reduced amount after the end of one year after the date of the issue of the Completion Certificate] ;

 - (iii) to GBP**insert amount** [being the reduced amount after the end of two years after the date of issue of the Completion Certificate];

 - (iv) to GBP**insert amount** [being the reduced amount after the end of three years after the date of issue of the Completion Certificate];

 - (v) to GBP.....**insert amount** [being the reduced amount after the end of four years after the date of issue of the Completion Certificate];

(vi) to nil on the issue of the Maintenance Certificate whereupon this Guarantee shall expire.

- 5 Notwithstanding the date of execution of this Guarantee, this Guarantee shall cover all the said obligations and liabilities of the Contractor as from the date when the Contractor first started performance of any of his obligations under the Contract.
- 6. This Guarantee shall not confer any benefit on or be enforced by any third party.
- 7. The benefit of this Guarantee may only be assigned with the prior written consent of the Contractor and the Guarantor.
- 8. Any payment made by the Guarantor under this Guarantee shall reduce the Maximum Value current at the date of such payment.
- 9. The Guarantor shall not at any time be obliged to concern itself or make enquiries as to whether the Employer is entitled to make a demand under this Guarantee.
- 10. This Guarantee shall be governed by and construed in accordance with the Laws of Scotland.

IN WITNESS whereof these presents consisting of this and the two preceding pages, are subscribed on behalf of the Guarantor by [insert full name of signatory], [insert designation – either “one of its directors” or “authorised to sign on its behalf”], at [insert place of signature] on the [] of [] 20[14] before the following witness: [insert full name and address of witness].

.....

.....

Witness

2.4 Annex 3 To Conditions of Contract

Data Processing Agreement

DATA PROCESSING AGREEMENT

between

THE SCOTTISH MINISTERS (ACTING THROUGH TRANSPORT SCOTLAND)

and

[INSERT NAME OF CONTRACTOR]

DATA PROCESSING AGREEMENT

between

- (1) **The Scottish Ministers** acting through Transport Scotland, [REDACTED] (the “**Employer**”); and
- (2) **[INSERT NAME OF CONTRACTOR]**, [*insert legal designation, including address and company number/statutory basis, if applicable*] (the “**Contractor**”),

hereinafter referred to collectively as “**Parties**” or individually as “**Party**”.

It is hereby agreed as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Terms defined in the conditions of contract between the Employer and the Contractor (“**Agreement**”) shall have the same meaning when used in this Data Processing Agreement. In addition, the definitions below apply in this Data Processing Agreement:

“**Data Controller**” has the meaning set out in the Data Protection Legislation;

“**Data Protection Legislation**” means the GDPR; and until 25 May 2018, the Data Protection Act 1998; and any applicable legislation adopted by the United Kingdom post the United Kingdom ceasing to be a Member State of the European Union (whichever is in force at the time of this Data Processing Agreement); and any statutory modification or re-enactment thereof and any applicable codes of conduct;

“**Data Processor**” has the meaning set out in the Data Protection Legislation;

“**Data Subject**” means a living individual who is the subject of Personal Data;

“**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679);

“**Personal Data**” has the meaning set out in the Data Protection Legislation and relates only to personal data (including sensitive personal data), or any part of such personal data, of which the Employer is the Data Controller and in relation to which the Contractor is providing services under the Agreement;

“**processing, process and processes**” have the meaning set out in the Data Protection Legislation;

“**Purpose(s)**” means the purposes as determined by the Employer and set out in Part 1 of the Schedule;

“**Schedule**” means the schedule (and its parts) to this Data Processing Agreement; and

“**Working Day (or Business Day)**” means any day other than a Saturday, Sunday or Scottish Bank Holiday.

- 1.2 The Schedule (and its parts) forms part of this Data Processing Agreement and any reference to this Data Processing Agreement includes the Schedule.

2. GENERAL

- 2.1 This Data Processing Agreement forms an integral part of the Agreement.
- 2.2 The Contractor will have access to the Personal Data which will be shared by the Employer for the Purpose(s).

- 2.3 The Employer and the Contractor acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Data Controller and the Contractor is the Data Processor of any Personal Data.
- 2.4 If, during the term of the Agreement and this Data Processing Agreement, the United Kingdom leaves the European Union, the Parties undertake to discuss in good faith what procedures and processes require to be put into place to ensure that the Personal Data is processed in accordance with the standards and laws to which the Employer and Contractor are each subjected.

3. PROCESSING

- 3.1 The processing of the Personal Data by the Contractor shall take place within the framework of this Data Processing Agreement.
- 3.2 The Contractor may only act in relation to the Personal Data upon receiving written instructions from the Employer (unless otherwise required to do so by applicable law).
- 3.3 The Contractor shall process the Personal Data only to the extent, and in such a manner, as is necessary for the Purpose(s) and in accordance with the Employer's written instructions, and shall not process the Personal Data for any other purpose or without written instructions.
- 3.4 The Contractor shall not transfer or process the Personal Data outside (i) the United Kingdom or (ii) a Member State of the European Economic Area, without the prior written approval of the Employer.
- 3.5 The Contractor shall only collect Personal Data on behalf of the Employer if the Employer has provided its prior written consent. If the Employer provides such consent the Contractor shall only collect Personal Data on behalf of the Employer in accordance with the Employer's written instructions.
- 3.6 The Contractor agrees and warrants that it shall collect and process the Personal Data in accordance with the Data Protection Legislation.
- 3.7 The Employer has defined that the following categories of Personal Data will be collected and processed by the Contractor under this Data Processing Agreement:
- 3.7.1 [INSERT TYPES OF DATA TO BE PROCESSED BY CONTRACTOR
- 3.7.2 name and title;
- 3.7.3 professional, commercial or business addresses;
- 3.7.4 date of birth;
- 3.7.5 telephone number;
- 3.7.6 professional, commercial or business e-mail address;
- 3.7.7 special data (information about race and ethnic origin, political opinions, religious or philosophical convictions, trade union membership, health or sexuality);
- 3.7.8 ETC.]
- 3.8 The Employer has defined the following Data Subject categories from who the Personal Data as defined in clause 3.7 above will be collected and processed by the Contractor under this Data Processing Agreement:
- 3.8.1 [INSERT CATEGORIES OF DATA SUBJECT E.G. EMPLOYEES];

3.8.2 [INSERT].

4. CONTRACTOR'S GENERAL OBLIGATIONS

- 4.1 The Contractor shall keep a record of any processing of Personal Data it carries out on behalf of the Employer. The Employer may have access to the record upon giving 5 Working Days' written notice to the Contractor.
- 4.2 The Contractor shall deal promptly and properly with all inquiries from the Employer relating to its processing of the Personal Data. The Contractor shall make available to the Employer all information necessary to demonstrate compliance with the obligations under the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Employer or another auditor mandated by the Employer. The Contractor shall immediately inform the Employer if, in its opinion, an instruction under this clause 4.2 infringes the Data Protection Legislation.
- 4.3 The Contractor shall comply with any request from the Employer requiring the Contractor to amend, rectify, correct, block, transfer, delete or return the Personal Data as soon as practicable and in any event within 5 Working Days of receipt.
- 4.4 At the Employer's request, the Contractor shall provide to the Employer a copy of all Personal Data held by it in the format and on the media reasonably specified by the Employer.
- 4.5 If the Contractor receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation and the data protection principles set out therein, it shall immediately notify the Employer and it shall provide the Employer with full co-operation and assistance in relation to any such complaint, notice or communication.
- 4.6 The Contractor shall inform the Employer without undue delay (and in any event within 2 hours) after becoming aware of any breach of the Data Protection Legislation by the Contractor or its employees or agents.
- 4.7 The Contractor shall inform the Employer promptly, and within 1 Working Day, after becoming aware of Personal Data being lost, stolen or subjected to unauthorised access or becomes damaged, corrupted, destroyed or unusable. The Contractor will restore such Personal Data at its own expense.
- 4.8 The Contractor shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Employer or as provided for in this Data Processing Agreement.
- 4.9 The Employer is entitled, on giving at least five Working Days' notice to the Contractor, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Contractor.
- 4.10 The Contractor shall assist the Employer in ensuring compliance with the obligations under the Data Protection Legislation and within the timescales required by the Data Protection Legislation.

5. TECHNICAL AND ORGANISATIONAL MEASURES

- 5.1 The Contractor agrees to implement appropriate technical and organisational measures to ensure, a level of security as required by the Data Protection Legislation, against the unauthorised or unlawful processing of, or access to, Personal Data and against the accidental or unlawful loss, alteration or destruction of, or damage to, Personal Data and in particular the Contractor shall implement appropriate measures to:

- 5.1.1 prevent unauthorised persons from gaining access to data processing systems with which Personal Data or processes used by the Contractor to process Personal Data;
 - 5.1.2 prevent its data processing systems from being used without authorisation;
 - 5.1.3 ensure that persons entitled to use its data processing systems have access only to the Personal Data to which they have a right of access, and that Personal Data cannot be read, copied, modified or removed without authorisation during processing and after storage;
 - 5.1.4 ensure that Personal Data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of Personal Data by means of data transmission facilities is envisaged; and
 - 5.1.5 ensure that it is possible to check and establish whether and by whom Personal Data has been input into data processing systems, modified or removed.
- 5.2 The Contractor has or will implement the technical and organisational measures as set out in Part 2 to the Schedule.
- 5.3 The Contractor shall document its implementation of technical and organisational measures in accordance with the requirements of the Data Protection Legislation and Part 2 of the Schedule.
- 5.4 The Contractor agrees and warrants to the Employer that the Contractor's security measures are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of Personal Data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the Personal Data to be protected having regard to the state of the art and the cost of their implementation.

6. EMPLOYER'S RIGHT

The Employer is entitled to appoint a third party independent auditor in the possession of the required professional qualifications and bound by a duty of confidentiality, to inspect the Contractor's compliance with this Data Processing Agreement and the Data Protection Legislation.

7. WARRANTIES AND INDEMNITIES

- 7.1 The Contractor undertakes and warrants that it will:
- 7.1.1 collect and process the Personal Data in compliance with the Data Protection Legislation and in accordance with the Agreement and this Data Processing Agreement;
 - 7.1.2 treat the Personal Data as confidential information and keep it secret and confidential; and
 - 7.1.3 fully assist the Employer in ensuring compliance with the obligations under the Data Protection Legislation and within the timescales required by the Data Protection Legislation.
- 7.2 The Contractor agrees to fully indemnify and keep indemnified and defend at its own expense the Employer and the Crown against all costs, claims, damages or expenses incurred by the Employer or the Crown, or for which the Employer or the Crown may

become liable due to any failure by the Contractor or its employees or agents to comply with any of its obligations under this Data Processing Agreement or under the Data Protection Legislation.

8. CONTRACTOR'S EMPLOYEES

8.1 The Contractor shall ensure that access to the Personal Data is limited to:

8.1.1 those employees of the Contractor who need access to the Personal Data to meet the Contractor's obligations under the Contract; and

8.1.2 in the case of any access by any employee of the Contractor, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.

8.2 The Contractor shall ensure that all its employees:

8.2.1 are informed of the confidential nature of the Personal Data;

8.2.2 have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

8.2.3 have undertaken training in the laws relating to handling personal data; and

8.2.4 are aware both of the Contractor's duties and their personal duties and obligations under the Data Protection Legislation, the Agreement, and this Data Processing Agreement.

9. SUB-PROCESSORS

9.1 The Contractor shall not assign, subcontract or otherwise deal with its obligations under this Data Processing Agreement to a sub-processor without the prior written consent of the Employer.

9.2 Where consent is given by the Employer in accordance with clause 9.1, the Contractor shall ensure that the sub-processor's written agreement is on terms which are the same as those set out in this Data Processing Agreement and the Employer will also be a party to such an agreement.

10. DATA SUBJECT'S RIGHTS

10.1 The Contractor shall provide the Employer with full co-operation and assistance by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Employer's obligation to respond to requests for exercising the Data Subject's rights under the Data Protection Legislation.

10.2 The Contractor shall notify the Employer within two Working Days if it receives a request from a Data Subject for access to that Data Subject's Personal Data or for exercising the Data Subject's rights under the Data Protection Legislation. The Contractor shall not deal with the Data Subject's request for exercising the Data Subject's request or disclose the Personal Data to any Data Subject (or to a third party) other than at the request of the Employer.

11. CONSEQUENCES OF TERMINATION

The Parties agree that on the completion of the Purpose(s), the Contractor and any sub-processor shall, at the choice of the Employer, return all the Personal Data transferred including any data storage media supplied to the Contractor, and the copies thereof to the Employer or shall destroy all the Personal Data. The method of destruction must safeguard

the confidentiality of the Personal Data. The Contractor shall provide the Employer with a written proof of proper destruction.

12. NOTICES

Any demand, notice or other communication shall be made and delivered in accordance with the Agreement.

13. SEVERANCE

If any provision or part-provision of this Data Processing Agreement is declared or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, its invalidity or unenforceability shall not affect any other provision all of which shall remain in full force and effect.

14. INADEQUACY OF DAMAGES

The Contractor acknowledges and agrees that due to the sensitive nature of the Personal Data being shared under this Data Processing Agreement that, damages alone would not be an adequate remedy for any breach by the Contractor of the provisions of this Data Processing Agreement and that accordingly the Employer shall be entitled, without proof of economic or other loss, to specific implement, interdict (including but not restricted to any interim remedy) or other equitable relief for any threatened or actual breach of the provisions of this Data Processing Agreement, in addition to any other remedy to which it may be entitled at law.

15. GOVERNING LAW

This Data Processing Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.

16. JURISDICTION

Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Data Processing Agreement or its subject matter or formation.

IN WITNESS WHEREOF these presents consisting of this and the 5 preceding pages along with the attached Schedule are executed by the Parties hereto as follows:

This is the Schedule referred to in the foregoing Data Processing Agreement between the Scottish Ministers (acting through Transport Scotland) and [INSERT NAME OF CONTRACTOR]

SCHEDULE

PART 1

Purpose(s)

[INSERT PURPOSE(S) OF PROCESSING DATA].

PART 2**Technical and Operational Measures (see clauses 5.2 and 5.3)****1. INTRODUCTION**

This Part 2 details the technical and organisational measures that will or have been implemented by the Contractor for data protection purposes.

2. ACCESS CONTROL (BUILDING / OFFICES / DATA CENTRE)

The Contractor has implemented, but not limited to, the following measures to prevent the unauthorised access to data processing systems where Personal Data is processed:

<input checked="" type="checkbox"/> Alarm system	<input checked="" type="checkbox"/> CCTV at entry points (office and data centres)
<input checked="" type="checkbox"/> Automatic access control system	<input checked="" type="checkbox"/> Security locks
<input checked="" type="checkbox"/> Photoelectric sensors / Movement detectors	<input checked="" type="checkbox"/> Visitor management at reception desks
<input checked="" type="checkbox"/> Key Management (Issuance of keys, etc.)	<input checked="" type="checkbox"/> Careful selection of cleaning staff
<input checked="" type="checkbox"/> Logging of visitors	<input checked="" type="checkbox"/> Visible wearing of access badges mandatory
<input checked="" type="checkbox"/> Careful selection of security guards	<input checked="" type="checkbox"/> A separate, specific and documented access control for data centres and server rooms for authorized persons is implemented. Access by authorized persons is documented by name and card or token number. For the data centres, separate access control systems are implemented
<input checked="" type="checkbox"/> Protection of building shafts	
<input checked="" type="checkbox"/> Chip card / Transponder locking system	
<input checked="" type="checkbox"/> Manual locking system (Limited usage for key employees to be used in the event of a failure in the access control systems)	

3. ACCESS CONTROL (SYSTEMS)

The Contractor has implemented, but not limited to, the following measures, to prevent the use of data processing systems by unauthorised persons:

<input checked="" type="checkbox"/> Assignment of user rights	<input checked="" type="checkbox"/> Assignment of user profiles to IT systems
<input checked="" type="checkbox"/> Assignment of passwords	<input checked="" type="checkbox"/> Use of VPN Technology
<input checked="" type="checkbox"/> Authentication with username / password	<input checked="" type="checkbox"/> Encryption of mobile storage media
<input checked="" type="checkbox"/> Use of Intrusion-Prevention-Systems	<input checked="" type="checkbox"/> Use of central smartphone administration (for example: remote wiping of smartphone)
<input checked="" type="checkbox"/> Use of Hardware Firewalls	<input checked="" type="checkbox"/> Disk encryption on laptops / notebooks
<input checked="" type="checkbox"/> Creation of user profiles	<input checked="" type="checkbox"/> Use of a software firewall (office clients)
<input checked="" type="checkbox"/> Additional measures: web-application firewalls, regular vulnerability scans, regular penetration testing, patch management, minimum requirements for password complexity and forced password changes, use of virus scanners	

4. ACCESS CONTROL (DATA)

The Contractor has implemented, but not limited to, the following measures, to ensure that authorised users of a data processing system may only access the data for which they are authorised, and to prevent personal data from being read while the data is in use, in motion, or at rest without authorisation:

<input checked="" type="checkbox"/> Creation of an authorization concept	<input checked="" type="checkbox"/> Disk encryption (backup tapes for off-site storage, laptops)
<input checked="" type="checkbox"/> Number of administrators reduced to "absolute necessary"	<input checked="" type="checkbox"/> Management of rights by system administrators

- | | |
|---|---|
| <input checked="" type="checkbox"/> Logging of application access, especially during the entry, modification and deletion of data | <input checked="" type="checkbox"/> Password policy including password length, password change management |
| <input checked="" type="checkbox"/> Secure media sanitization before re-use | <input checked="" type="checkbox"/> Secure storage of data carriers |
| <input checked="" type="checkbox"/> Use of shredders or services (if possible with privacy seal) | <input checked="" type="checkbox"/> Logging of secure media destruction |
| | <input checked="" type="checkbox"/> Compliant destruction of data media (DIN 66399) |

5. TRANSFER CONTROL

The Contractor has implemented, but not limited to, the following measures, to ensure that Personal Data cannot be read, copied or modified during electronic transmission or during transportation or storage to disk. Additionally to control and determine to which bodies that the transfer of Personal Data provided by data communication equipment is allowed:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Creation of dedicated lines or VPN tunnels | <input checked="" type="checkbox"/> Disclosure of data in anonymous or pseudonymous form |
| <input checked="" type="checkbox"/> Documentation of recipients of data and the time periods for the provision of data including agreed deletion times | <input checked="" type="checkbox"/> Creation of an overview of regular request and delivery operations |
| <input checked="" type="checkbox"/> During physical transport, careful selection of transport personnel and vehicles (tape off-site storage) | <input checked="" type="checkbox"/> During physical transport, secure transport containers / packaging (tape off-site storage) |
| <input checked="" type="checkbox"/> Disk encryption (backup tapes for off-site storage) | <input checked="" type="checkbox"/> TLS encryption of all communications (Web-Client, APIs, mobile Apps) |

6. INPUT CONTROL

The Contractor has implemented, but not limited to, the following measures, to ensure that it is possible to ensure, subsequently control, and determine if and by whom, Personal Data has been entered, changed or removed on data processing systems:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Logging of input, modification and deletion of data | <input checked="" type="checkbox"/> Creation of an overview of which applications are permitted to input, modify or delete which data |
| <input checked="" type="checkbox"/> Traceability of input, modification and deletion of data by individual user names (not user groups) | <input checked="" type="checkbox"/> Storage of forms, through which data has been acquired during automated processing |
| <input checked="" type="checkbox"/> Granting of rights for the input, modification or the deletion of data based on an authorization concept | |

7. ORDER CONTROL

The Contractor has implemented, but not limited to, the following measures, to ensure that Personal Data which is processed by request of the data owner by a data processor, shall only be processed as instructed by the data owner:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Contractor selection via history review (in particular regarding data security) | <input checked="" type="checkbox"/> Prior examination of the documentation and the security measures taken by the contractor |
| <input checked="" type="checkbox"/> Written instructions to the contractor (for example, by Data Processing Agreement) (GDPR) | <input checked="" type="checkbox"/> Obligation of the contractor's employees to maintain data confidentiality (GDPR) |
| <input checked="" type="checkbox"/> Ensure contractors have appointed Data Protection Officers | <input checked="" type="checkbox"/> Ensure the secure destruction of data after termination of the contract |
| <input checked="" type="checkbox"/> Effective control rights over data processors have been agreed | <input checked="" type="checkbox"/> Continual review of contractors and their activities |

8. AVAILABILITY CONTROL

The Contractor has implemented, but not limited to, the following measures, to ensure that Personal Data is protected against accidental destruction or loss:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Uninterruptible power supplies (UPS) | <input checked="" type="checkbox"/> Air conditioning in server rooms |
| <input checked="" type="checkbox"/> Devices for monitoring temperature and humidity in server rooms | <input checked="" type="checkbox"/> Protection power strips in server rooms |
| <input checked="" type="checkbox"/> Fire and smoke detection systems | <input checked="" type="checkbox"/> Fire extinguishers in server rooms |
| <input checked="" type="checkbox"/> Alarm when unauthorised entry to server rooms is detected | <input checked="" type="checkbox"/> Creation of a backup & recovery concept |
| <input checked="" type="checkbox"/> Testing of data recovery | <input checked="" type="checkbox"/> Preparation of an emergency response plan |
| <input checked="" type="checkbox"/> Secure off-site storage of data backups | <input checked="" type="checkbox"/> Server rooms not located under sanitary installations |
| <input checked="" type="checkbox"/> In flood areas, server rooms are above the water border | |

9. SEGREGATED PROCESSING

The Contractor has implemented, but not limited to, the following measures, to ensure that data which is collected for different purposes can be processed separately:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Creation of an authorisation concept | <input checked="" type="checkbox"/> Logical client separation (in software) |
| <input checked="" type="checkbox"/> Provision of records with purpose attributes / data fields | <input checked="" type="checkbox"/> In pseudonymous data: the separation of the mapping file and storage on a separate secured IT system |
| <input checked="" type="checkbox"/> Approved and documented database rights | <input checked="" type="checkbox"/> Separation of production and test systems |

10. DATA PROTECTION OFFICER

The Contractor has appointed a Data Protection Officer (DPO) in accordance with the GDPR. This person shall ensure the Contractor's compliance with the GDPR.

Contact Information:

The Contractor has appointed a Data Protection Officer (DPO) in accordance with the GDPR. This person shall ensure the Contractor's compliance with the GDPR.

Contact Information:

[INSERT]

2.5 Annex 4 To Conditions of Contract

INSURANCE

- 1** Subject to any other provision of the Contract this Annex 4 specifies the: **General**

 - (i) indemnities that shall be provided by the Contractor to the Employer;
 - (ii) minimum amount of insurance that the Contractor shall be required to effect and maintain in force throughout the entirety of the Contract; and
 - (iii) maximum deductibles or excesses (that being the portion of each claim for which the Insurer(s) shall not be liable to the Contractor or which the Contractor shall pay to insurers in respect of a legal liability claim) in respect of the insurance that shall be provided by the Contractor under any other provision of the Contract.

- 2** In respect of each and every claim or series of claims arising out of any one incident and unlimited during the period of the Contract an amount equal to the total costs and expenses of any and every kind arising out of an event that falls to be indemnified as a result of any indemnity that shall be required to be given by the Contractor within the Contract including but not limited to the indemnities referred to in Clauses 19 to 25 inclusive of the Contract. **Indemnity Requirements**

- 3** Notwithstanding any other provision of the Contract prior to the commencement of any part of the Design or part of the Works the Contractor shall be required to provide evidence to the Employer that the insurance referred to in Tables 3.1 and 4.1 of this Annex 4 shall be in full force and effect. **Insurance Requirements**

Table 3.1

Reference Number	Description of Insurance
1.	<p>Contractor’s all risks insurance shall be provided by the Contractor (including but not limited to terrorism cover) to the full replacement or reinstatement value of:</p> <ul style="list-style-type: none"> (i) all Works; (ii) all Constructional Plant used in the execution of the Works; and (iii) any plant or materials that shall be or intended to be incorporated into the Works anywhere in Continental Europe and whilst in transit to Site, including roll on roll off ferries <p>for the period of the Contract including any Period of Maintenance.</p> <p>The insurance that shall be provided by the Contractor shall be written in the names including but not limited to those of the Employer and the Contractor and shall include sub-contractors of any tier of the Contractor.</p> <p>The insurance shall include the endorsements referred to in paragraph 5 of this Annex 4.</p>
2.	<p>Public Liability insurance in respect of loss or damage to any property, including that of the Employer including Crown Property or death or injury to any person.</p>

	<p>The minimum limit of indemnity provided by the Contractor shall be £[REDACTED] ([REDACTED]) in respect of each and every occurrence and unlimited in the period of insurance.</p> <p>The insurance shall be written in the names including but not limited to those of the Employer and the Contractor and shall include the endorsements referred to in paragraph 5 of this Annex 4 referred to in paragraph 5 of this Annex 4.</p>
3.	<p>Professional Indemnity insurance for all Contractor's activities including in respect of the Design, construction and completion of the Works (including any Works carried out during any Period of Maintenance) including but not limited to:</p> <p>(i) any Design and construction and completion of the Works executed by the Contractor; and</p> <p>(ii) for the Contractor's business in general.</p> <p>The minimum limit of indemnity provided by the Contractor shall be £[REDACTED] ([REDACTED] pounds sterling) in respect of each and every occurrence and unlimited in the period of insurance but shall be limited to £[REDACTED] in the aggregate in respect of Pollution losses including gradual pollution.</p> <p>The insurance that shall be provided by the Contractor shall cover the acts of the Contractor and the Contractor's liability for the acts of any of its contractors and sub contractors of any tier in accordance with any other provision of the Contract.</p> <p>The insurance that shall be provided by the Contractor shall include the endorsements referred to in paragraph 5 of this Annex 4.</p>
4.	<p>Employers Liability insurance with a limit of indemnity adequate to satisfy the requirements of the Employers Liability Compulsory Insurance Act 1969 and any subsequent Legislation.</p> <p>The insurance that shall be provided by the Contractor shall include the endorsements referred to in paragraph 5 of this Annex 4.</p>
5.	<p>Contractor's Pollution Legal Liability insurance including consequential clean-up of any part of the Site.</p> <p>Such insurance shall be for a minimum limit of indemnity of £[REDACTED] ([REDACTED] pounds sterling) in respect of any one loss and in the aggregate in the period of insurance.</p> <p>The insurance shall be written in the names including but not limited to those of the Employer and the Contractor and shall include the endorsements referred to in paragraph 5 of this Annex 4.</p>
6.	<p>Any other Insurance required by the Contract or by Legislation with a Sum Insured / limit of indemnity adequate to satisfy the contract or legal requirement.</p>

4

Excesses

Table 4.1

Reference Number	Type of Insurance	Excess
1.	Contractors All Risks	(i) £[REDACTED] in respect of each and every loss other than Defective Design Materials and Workmanship where the amount shall be £[REDACTED] in respect of each and every loss; and (ii) Contractor's Plant where the amount shall be [REDACTED] of each and every loss (with a minimum in respect of each and every loss of £[REDACTED]).
2.	Public Liability (i) Personal Injury Claims (ii) Property Damage Claims	[REDACTED] £[REDACTED] in respect of each and every loss or series of losses arising out of one event.
3	Professional Indemnity	£[REDACTED] in respect of each and every loss or series of losses arising out of one event.
4.	Employers Liability	[REDACTED]
5.	Contractors Pollution Legal Liability	£[REDACTED] in respect of each and every loss or series of losses arising out of one event.
6.	Any other Insurance required by Legislation or the Contract	Not more than the maximum excess specified by law or consented to in writing by the Engineer.

- 5 (1) All the insurance referred to in Table 3.1 of this Annex 4 to Conditions of Contract shall be endorsed by the insurers to the effect that:
- (i) such insurance shall be subject to Scots Law and the jurisdiction of the Scottish Courts; and
 - (ii) the insurers for such insurance shall provide not less than 30 days written notice to the Employer prior to any cancellation non-renewal or modification to any such policy for any such insurance.
- (2) The insurance referred to in reference numbers 2 and 5 of Table 3.1 of this Annex 4 shall be endorsed to the effect that actions between the Insured parties shall be treated as though a separate insurance had been issued to each of them.

**Insurance
Policy
Requirements**

- (3) The insurance referred to in reference numbers 1, 2 and 5 of Table 3.1 of this Annex 4 shall be endorsed such that insurers for any such insurance have accepted the following provisions:
- (i) Waiver of Duty of Disclosure
 - (a) to waive their rights to receive from the Employer disclosure of material circumstances or information;
 - (b) to avoid the insurance for any non-disclosure of material circumstances or information by the Employer or his servants or agents; and
 - (c) to avoid the insurance or claim damages against the Employer for any misrepresentation made by or on behalf of the Employer.
 - (ii) Waiver of Rights of Subrogation

to waive all rights of subrogation or claims for contributory negligence against the Employer.
 - (iii) Joint Insured Clause

that all the provisions of the insurance (except the sums/insured limits of liability) shall operate as if there was a separate insurance policy with and covering each named insured without right of contribution from any other insurance which shall be carried by an insured.

Without limitation to the foregoing this shall be on the basis that including but not limited to the non-compliance with any insurance term condition or warranty or the non-disclosure or misrepresentation of material circumstances or information by the Contractor or any other co-insured under any such insurance shall not affect the rights or interests of the Employer under the insurance.
 - (iv) Non-Vitiation Clause

that a vitiating act committed by one under any insurance shall not prejudice the right to indemnity of any other Insured who has an insurable interest in such insurance and who has not committed a vitiating act.

2.6 Annex 5 To Conditions of Contract

LEASE

ANNEX 5: MODEL LEASE**Model Lease****LEASE****Between****The Scottish Ministers****And****Farrans Construction****1 Definitions**

In this Lease:-

“Agreement” means the Agreement between the Landlord and Tenant dated [] in respect of the Design, construction, completion and maintenance of the A90/A96 Haudagain Improvement

“the Landlord” means the Scottish Ministers.

“the Tenant” means [] incorporated under the Companies Acts and [] and in substitution successors and assignees of the Tenant’s interest in the Agreement to the extent permitted in the Agreement.

2 The Grant

The Landlord hereby lets to the Tenant the areas of ground delineated in red on the plans numbered [] annexed and executed as relative hereto for the period from [date to be specified by the Scottish Ministers] to the date of the Certificate of Completion (as defined in the Agreement) or if earlier, the date of termination of the Agreement, provided that the circumstances specified in Clause 63 or Clause 18 of the Agreement which entitle the Scottish Ministers to terminate the Agreement on giving notice to the Company exist, or such earlier date as the Landlord may at his absolute discretion notify to the Tenant at any time during the period of this Lease (being not less than 40 days after the date of such notice).

Notwithstanding such the Landlord and any person(s) authorised by him including but not limited to:-

- (i) any other contractor(s) and their workmen; and
- (ii) his own workmen; and
- (iii) any Undertaker (as defined in the Agreement); and
- (iv) any other person(s) authorised by the Landlord

shall be entitled to have unlimited access to the said areas of ground referred to earlier for

- (i) any purpose whatsoever in connection with the Agreement; or

- (ii) any other purpose in connection with the Design (as defined in the Agreement), construction, completion and maintenance of the Works (as defined in the Agreement),
- (iii) for any other purpose not connected with the Design, construction, completion and maintenance of the Works.

3 Rent

The rent shall be [REDACTED] per annum if asked.

4 Use

The subjects of let shall be used only for the purposes of the Tenant in exercising any of its rights or implementing its obligations under the Agreement and the Tenant accepts the subjects of let as being fit for their purpose.

The Tenant will comply with all statutes, bye-laws and other regulations affecting the subjects of let or the Tenant's use of the subjects of let.

5 Indemnity

The Tenant will indemnify and keep indemnified the Landlord on demand from all liability in respect of:

- (i) any injury to or death of any person;
- (ii) damage or loss which may be suffered by any persons by reason of or arising out of the use of the subjects of let by the Tenant;
- (iii) any breach by the Tenant of its obligations under the Lease; and
- (iv) local authority rates and other costs associated with the occupancy of the subjects of let.

6 Assignment and Sub-letting

The Tenant shall not be entitled to assign or sub-let the subjects as hereinbefore provided for the Agreement.

7 Condition

The Tenant will:

- (i) at its own cost, repair and maintain the subjects of let in good repair and condition so that it is at all times in at least such condition and, when necessary, but only in so far as required to maintain the subjects of let in such condition, renew and rebuild the subjects of let; and
 - (ii) leave the subjects of let in such condition at the date of expiry of the Lease;
- all to the satisfaction of the Landlord (acting reasonably).

The Landlord will have no liability to repair, maintain, renew or replace the subjects of let.

8 Warrandice

The Landlord grants fact and deed warrandice only and that subject to there being reserved to the Landlord and those authorised by him all necessary rights in respect of the subjects of let (including access) as may be specified in the Agreement.

9 Notices

Any notice under this Lease to the Tenant shall be sufficiently served if sent to the Tenant at its registered office by recorded delivery post. A notice so sent shall be deemed to have been received by the Tenant on the second day of business after the business day on which it was posted. In proving posting, it shall be sufficient to prove that the envelope containing the notice was duly addressed in accordance with the provisions of this Clause and posted to the place to which it was addressed.

10 Consent to Registration

The parties consent to registration hereof for preservation.

IN WITNESS WHEREOF, these presents, consisting of this and the preceding two pages together with the Plans annexed thereto

Subscribed on behalf of the Tenant by the undersigned, being a person authorised to subscribe this Lease on behalf of.....

at.....

on the.....

in the presence of the witness after subscribing.....

(signature)

Full name of signatory (capital letters).....

Position of signatory (capital letters).....

Witness.....

(signature)

Full name of witness (capital letters).....

Occupation of witness (capital letters).....

Address of witness.....

.....

.....

Subscribed by an officer of the Scottish Ministers at.....

on the.....

in the presence of the witness after subscribing.....

(signature)

Full name of signatory (capital letters).....

Position of signatory (capital letters).....

Witness.....
(signature)

Full name of witness (capital letters).....

Occupation of witness (capital letters).....

Address of witness.....
.....
.....

[Appropriate Plans to be annexed]