NEC4 Engineering and Construction Contract – Option E

Contract

[DN – THIS IS A PRECEDENT FORM. EACH CONTRACT MUST BE PREPARED CAREFULLY AND ON A PROJECT SPECIFIC BASIS TO ENSURE THAT THIS DOCUMENT IS TAILORED SO AS TO BE SUITABLE FOR USE ON THE SPECIFIC PROJECT.]

OFFICIAL SENSITIVE

Form of Agreement

THIS AGREEMENT IS MADE AS A DEED the ……day of……20

BETWEEN

1 [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH ("the *Client*", which expression shall include its successors in the exercise of its statutory functions, successors in title and permitted assignees)] or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH ("the *Client*", which expression shall include its successors in the exercise of its statutory functions, successors in title and permitted assignees)];

AND

2 [ ] a company incorporated in and in accordance with the laws of [ ] with registered number [ ] whose registered office is at [ ] ("the *Contractor*").

RECITALS

A In response to the *Client's* invitation to tender, the *Contractor* has submitted a tender to provide [*DN – Insert details*] in accordance with the Scope.

B The *Client* has examined the *Contractor's* tender and now wishes to appoint the *Contractor* on the terms of this Agreement.

OPERATIVE PROVISIONS:

1 Definitions and interpretation

1.1 In this Agreement (including the Recitals):

1.1.1 any term used within initial capital letters has the meaning given to it in the *conditions of contract*; and

1.1.2 any italicised term has the meaning given to it in the Contract Data.

2 Contract documents

2.1 The following documents form the contract between the Parties:

2.1.1 this Agreement;

2.1.2 the *conditions of contract* in the form of the NEC4 Engineering and Construction Contract June 2017 (incorporating October 2020 amends), incorporating **Option E**, dispute resolution Option **W2** and secondary options **[X2], [X5], [X7], [X8], [X9], X11, [X13], [X14], X18, [X20], [X22], [Y(UK)1]**, **Y(UK)2** and **Y(UK)3** all as amended or

supplemented by **Option Z** (*additional conditions of contract*); [*DN – Please review X options against Contract Data.*]

2.1.3 the Contract Data at Appendix 1 and any documents referenced therein;

2.1.4 the *additional conditions of contract* contained within Appendix 2;

2.1.5 the Scope at Appendix 3;

2.1.6 the Contractor Warranty at Appendix 4;

2.1.7 the Sub-Contractor Warranty at Appendix 5;

2.1.8 the Performance Bond at Appendix 6;

2.1.9 the Parent Company Guarantee at Appendix 7;

2.1.10 the Trust Deed for Project Bank Account at Appendix 8;

2.1.11 the Joining Deed for Project Bank Account at Appendix 9;

2.1.12 the Advanced Payment Bond at Appendix 10;

2.1.13 the Pro-forma Subcontractor Approval Form at Appendix 11; and

2.1.14 the Vesting Agreement at Appendix 12.

3 Agreement

3.1 The *Contractor* will Provide the Works and will carry out its other duties in relation to the contract in accordance with the *conditions of contract* and other contract documents specified in clause 2.

3.2 The *Client* will pay to the *Contractor* the amounts due under and in accordance with the provisions of the contract.

3.3 The contract is the complete and entire agreement between the *Client* and the *Contractor* in relation to the *works* and supersedes any previous agreement between the Parties in relation to the *works*. Insofar as the *Contractor* has carried out any part of the *works* before the date of this Agreement, the obligations and liabilities of the *Contractor* under the contract shall take effect in all respects as if this Agreement had been dated prior to the carrying out of that part of the *works* by the *Contractor*.

4 Priority of documents

4.1 The several documents forming part of the contract are to be taken as mutually explanatory of one another

4.2 If there is any ambiguity or inconsistency in or between the documents comprising the contract, the priority of the documents is in accordance with the following sequence:

4.2.1 this Agreement

4.2.2 the completed Contract Data Part One (including the *additional conditions of contract*)

4.2.3 the *additional conditions of contract*

4.2.4 the Scope

4.2.5 the completed Contract Data Part Two

4.2.6 any other document forming part of the contract

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

Signed as a Deed by **TRANSPORT FOR WALES / TRANSPORT FOR WALES RAIL LTD** acting by two directors:

.....
Director

.....
Director

Signed as a Deed by **[INSERT NAME OF CONTRACTOR]** acting by a director and its secretary or by two directors:

.....
Director

.....
Director / Secretary

Appendices

1. **Contract Data**
2. ***additional conditions of contract***
3. **Scope**
4. **Contractor Warranty**
5. **Contractor Subcontractor Warranty**
6. **Performance Bond**
7. **Parent Company Guarantee**
8. **Trust Deed for Project Bank Account**
9. **Joining Deed for Project Bank Account**
10. **Advance Payment Bond**
11. **Subcontractor Approval Pro Forma**
12. **Vesting Agreement**

Appendix 1 - CONTRACT DATA

Part one - Data provided by the *Client*

1. General

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

Main Option: **Option E**

Option for resolving and avoiding disputes: **Option W2**

Secondary Options: **[X2], [X5], [X7], [X8], X9, X11, [X13], [X14] X18, [X20], [X22,] [Y(UK)1], Y(UK)2, [Y(UK)3]** and **Z [DN – Review Options on a project by project basis]**

The *works* are **[ ].**

The *Client* is

Name: **Transport for Wales / Transport for Wales Rail Ltd**

Address for communications: **3, Llys Cadwyn, Pontypridd, CF37 4TH**

Address for electronic communications: **[ ]**

The *Project Manager* is

Name: **[ ]**

Address for communications: **[ ]**

Address for electronic communications: **[ ]**

The *Supervisor* is

Name: **[ ]**

Address for communications: **[ ]**

Address for electronic communications: **[ ]**

The Scope is in **[ ]**

The Site Information is the information contained in

[ ]

The *boundaries of the site* are **[ ]**

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

The *law of the contract* is **the law of England and Wales as it is applied in Wales.**

The *period for reply* is [**two weeks**] except that

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

The following matters will be included in the Early Warning Register **[x]**

Early warning meetings are to be held at intervals no longer than [**4 weeks**]

[A Parent Company Guarantee **is/ is not** required.

An Advance Payment Bond **is/is not** required.

A Vesting Agreement **is/ is not** required.]

[DN – to be drafted on a project by project basis]

2. The *Contractor's* main responsibilities

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

Condition to be met	*key date*
[ ]	
[ ]	
[ ]	

The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* at intervals no longer than [**4 weeks**]

3. Time

The *starting date* is [ ]

The *access dates* are

part of the Site	date
[ ]	**[ ]**
[ ]	**[ ]**
[ ]	**[ ]**

The *Contractor* submits revised programmes at intervals no longer than [**one calendar month / 4 weeks**]

The *completion date* for the whole of the *works* is **[ ] weeks after the *starting date***

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

The *Contractor* is to submit a first programme for acceptance not later than

- [4 weeks] before the *starting date* or
- the Contract Date

whichever is the earlier.

4. Quality management

The *Contractor* is to submit a quality policy statement and quality plan not later than

- [4 weeks] before the *starting date* or
- the Contract Date

whichever is the earlier.

- The *defects date* is **[ ]** weeks after *completion*
- The *defect correction period* is **2 weeks** except that
- The *defect correction period* for an urgent defect as set out in the Scope is 24 hours.
- The *defect correction period* for **[ ]**is **[ ]**

5. Payment

- The *currency of the contract* is the **Pound Sterling (£)**
- The *assessment interval is* **one calendar month / 4 weeks**
- The *interest rate* is **2**% per annum above the **base** rate **in force from time to time of the Bank of England.**

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

6. Compensation events

These are additional compensation events:

[**DN**: project specific]

8. Liabilities and insurance

Contractor Insurances

Construction All Risks

The minimum amount of cover for insurance against all risks of loss of or damage to (not excluded by the terms and conditions of the policy) the works and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the works), equipment, temporary buildings and property owned by or supplied by the Client.

Loss of or damage to Equipment

The minimum amount of cover for insurance against loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the *Contractor* is the replacement cost

Public Liability Insurance

The minimum amount of cover for insurance against sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and / or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract is not Less than £10m per occurrence.

Employer's Liability Insurance

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is not Less than £10m per occurrence.

If there are additional *Client*'s liabilities

These are additional *Client's* liabilities

1……

2……

OR

There are no additional *Client's* liabilities

[DN: depends on the risk profile.]

If the *Client* is to provide Plant and Materials

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

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

If additional insurances are to be provided

[(1) Insurance to cover top-up Public Liability Insurance for not less than GBP £155,000,000 per occurrence. (*Contractor* to pay for any deductibles on this *Client* policy)[ ]

(1) Insurance for

Minimum amount of cover is [ ]

The deductibles are [ ]

The *Contractor* provides these additional insurances

(1) Insurance against [ ]]

Minimum amount of cover is [ ]

The deductibles are [ ]

[DN – review on a project by project basis – adjacent property insurance and/or existing building insurance may be appropriate]

Resolving and avoiding disputes

The *tribunal* is **litigation in the Courts of England and Wales**

The *Senior Representatives* of the *Client* are

Name (1) [ ]

Address for communications [ ]

Address for electronic communications [ ]

Name (2) [ ]

Address for communications [ ]

Address for electronic communications [ ]

The *Adjudicator* is to be nominated by the *Adjudicator nominating body*

The *Adjudicator nominating body* is TECBAR

X5: Sectional Completion

The *completion date* for each *section* of the *works* is

section	description	*completion date*
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

X7: Delay damages

(If Option X7 is used without Option X5)

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

£[ ] per day

(If Option X7 is used with Option X5)

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

section	description	amount per day
[ ]	[ ]	£[ ]
[ ]	[ ]	£[ ]
[ ]	[ ]	£[ ]

X8:* Undertakings to the *Client* or *Others	The *undertakings* to *Others* are provided to ……
	……..
If Option X8 is used	The *Subcontractor undertaking* to Others are
	works …….provided to ……..
	works …….provided to ……..
	The Subcontractor undertaking to the *Client* are
	works……
	works……
[X13: Performance bond	
	The amount of the performance bond is **£[ ]]**
If Option x13 is used	
X14: Advanced payment to the *Contractor*	The amount of the advanced payment is [ ]
	The period after Contract Date from which the Contractor repays the instalments in assessments is [ ]
If Option X14 is used	
	The instalments are [ ] (either an amount or a percentage of the payment otherwise due)
Advanced payment bond	An advanced payment bond **is/ is not** required (Delete as applicable)
X18: Limitation of liability	The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to
	For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to the total Defined Cost incurred under this Contract
	The *Contractor's* liability for Defects due to its design which are not listed on the Defect Certificate is limited to the total Defined Cost incurred under this Contract
	The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to the total Defined Cost incurred under this Contract
	The *end of liability date* is **12** years after the Completion of the whole of the *works*]

X20: Key Performance Indicators

The *incentive schedule* for Key Performance Indicators is in…….

A report of performance against each Key Performance Indicator is provided at intervals of ……months.

X22:

Early Contractor Involvement (only used with Options C and E)

If Option X22 is used

The Budget is

Item	description	amount
(1)……		
(2) ……..		
(3) ……		
(4) ……..		
Total ……		

The *Contractor* prepares forecasts of the total Defined Cost of the work to be done in Stage One in intervals no longer than…….

The *Contractor* prepares forecasts of the total Project Cost at intervals no longer than ……

If there are additional events which could change the Budget

These are additional events which could change the Budget

(1) ……

(2) ……..

(3) …….

The *budget incentive* is ……% of the saving.

[Y(UK)1: Project Bank Account

The *Contractor* **[is/is not]** to pay any charges made and to be paid any interest paid by the *project bank* (delete as applicable)]

term	*beneficiary*
[ ]	[ ][1]

[1] To be specified on a project by project basis where third party rights are required

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

If Option Y(UK) 2 is used and the final date for payment is not fourteen days after the date on which payment becomes due – check position with TFW payment terms

The period for payment is 14 days after the date on which payment becomes due.

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

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3

term	*beneficiary*
……	
The provisions of Option Y(UK)1	Named Suppliers

Part Two - Data provided by the *Contractor*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract

1. General

- the *Contractor* is
  - Name: .....
  - Address: .....
    .....
- The *fee percentage* is ..... %
- The *working areas* are the site and any site offices/compounds established for the *works*. The *working areas* do not include the *Contractor's* head or satellite offices.
- the key people are
  - Name: .....
    .....
  - Job: .....
    .....
  - Responsibilities:.....
  - .....
  - Qualifications: .....
    .....
  - Experience:.....
    .....

  - Name: .....
    .....
  - Job: .....
    .....
  - Responsibilities:.....
  - .....

- Qualifications: .....
.....

- Experience:.....
.....

- The *key persons* are set out in the Works Delivery Plan
- The following matters will be included in the Early Warning Register .....
.....
.....
- The p*roject bank* is .....
- The *named suppliers* are .....
.....

3. Time

- The programme identified in the Contract Data is [ ]

Y(UK)1: Project Bank Account

- The p*roject bank* is .....
- The *named suppliers* are .....

Data for Schedule of Cost Components

- The components of the cost of:

PEOPLE

People who are directly employed by the *Contractor* and whose normal place of working is within the Working Areas and

People who are directly employed by the *Contractor* and whose normal place of working is not within the Working Areas but who are working in the Working Areas

- People whose rates are detailed in the Cost to Employ sheet based on [ ].
- The listed items of Equipment purchased for work on this contract, with an on cost charge are:

Equipment	Time-related charge	Per time period
		per
		per

per

per

- The rates for special Equipment are

Equipment	Size or Capacity	Rate

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

Category of Employee	Hourly Rate

Data for Both Schedules of Cost Components

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

Category of Employee	Hourly Rate

- The percentage for design overheads is ..... %

Data for the Shorter Schedule of Cost Components

- The published list of Equipment is the last edition of the list published by .

  .....
- The percentage for adjustment for Equipment in the published list is ..... % (state plus or minus)
- The rates for other Equipment are

Equipment	Size or Capacity	Rate

Appendix 2- *additional conditions of contract*

Z: *Additional conditions of contract* — **The *additional conditions of contract* are noted below either as "Amendments to Core Clauses" or as "Supplementary Conditions of Contract"**

Amendments to Core Clauses

Z.1 Identified and defined terms

Z.1.1 Delete clause 11.2(2) and replace as follows:

"11.2(2) Completion is when

- the *Contractor* has done all the work in accordance with this contract which the Scope states it is to do by the Completion Date. If the work which the *Contractor* is to do by the Completion Date is not stated in the Scope, Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work
- the *Contractor* has corrected all Defects which have been notified prior to Completion, except for those Defects which the *Project Manager* has agreed may be corrected after Completion
- all the conditions of any Consents relating to the *works* have been complied with and satisfied (save in respect of any matters which will not prevent occupation and use of the *works*) which the *Project Manager* has agreed may be satisfied after Completion
- the *Contractor* has provided to the *Project Manager* copies of all statutory approvals, operating and maintenance manuals, relevant photographic and video surveys, condition schedules, relevant manufacturers' literature and guarantees and warranties for products and materials used in the *works*
- the *Contractor* has provided the *Client* with all collateral warranties which it is obliged to provide and/or procure in accordance with this contract"

Z.1.2 Replace **clause 11.2(4)** with the following

- "11.2(4) The Contract Date is the date of the Form of Agreement executed by the Parties or (if earlier) the date when the *Contractor* first begins to Provide the Works."

Z.1.3 Add the following words to **clause 11.2(5)**, after the words "this contract or any other contract with the *Client*":

"or committing or engaging in extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering or any similar activity whether in connection with the *works* or otherwise."

Z.1.4 Delete **clause 11.2(6)** and replace as follows:

"11.2(6) A Defect is

a part of the *works* (which term, as used in this contract, includes any design of the *works* by the *Contractor* or for which the *Contractor* is required to assume responsibility under this contract) which is not in accordance with the Scope."

Z.1.5 In **clause 11.2 (10)**, add the following before the full stop at the end of the clause

", excluding the Defined Cost of correcting Defects (where the cost is not a Disallowed Cost)."

Z.1.6 NOT USED

Z.1.7 Delete **clause 11.2(26)** and replace as follows

"11.2(26) Disallowed Cost is cost which the *Project Manager* decides

- is not justified by the *Contractor's* accounts and records,
- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the Contractor for the purposes of this contract
- should not have been paid to a Subcontractor or supplier in accordance with its contract,
- was incurred only because the *Contractor* did not
    - follow an acceptance or procurement procedure stated in the Scope
    - comply with a mandatory procedure or notification process as set out in the Scope
    - comply with a procedure set out in its quality plan,
    - give an early warning which this contract required it to give,
    - give notification to the *Project Manager* of the preparation for and conduct of an adjudication or proceedings of a tribunal between the *Contractor* and a Subcontractor or supplier, or

- protect materials in accordance with clause 70.1 or clause 73.3

and the cost of

- correcting Defects after Completion
- correcting Defects caused by the *Contractor* not complying with the relative standards or a constraint on how it is to Provide the Works stated in the Scope
- correcting Defects which the *Contractor* has previously corrected
- Profit payable to the *Contractor's* subsidiary, affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor, and profit payable between each party comprising the *Contractor* unless it is demonstrated that the *Contractor* affiliate provides better value for Money that the open market.
- Costs incurred as a result of any negligence or breach of contract, due to an act, omission or default by the *Contractor* or its employees, subcontractors or agents in Providing the Works;
- Costs incurred by the *Contractor* specific to overtime by people working from home where the overtime working has not been approved by and demonstrated to the *Project Manager;*
- Resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested and

Preparation for and conduct of an adjudication or proceedings of the *tribunal*."

Z.1.8 Delete **clause 11.2(31)** and replace with

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

Z.1.9 Add new sub-clauses to clause 11.2 as follows

"11.2(35) Applicable Law is any statute, statutory instrument, regulation, directive, rule, judgement, order, decision, recommendation or statutory guidance made under any statute or directive having the force of law which affects the *works* or the performance of any obligation under this contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the *works* or the project to which the *works* relates, including without limitation any statutory provisions and any decision, notice, direction, instruction, permission or award of a Competent Authority."

"11.2(36) Competent Authority is any legal person, regulator, statutory authority (including the *statutory authorities)* or statutory undertaker, and/or any court of law or tribunal in each case having authority under Applicable Law."

"11.2(37) Consents are any and all consents, licences, authorisations, permits, permissions, registrations, filings, exemptions, approvals and the like required from Competent Authorities or Others in order for the *Contractor* to Provide the Works in accordance with this contract and a "Consent" is any one of them."

"11.2(38) Prevention Event means one of the exceptional events or circumstances listed below provided always that such event or circumstance (a) is beyond the affected Party's control; (b) could not reasonably have been provided against, avoided or overcome by the affected Party; and (c) is not substantially attributable to the affected Party:

- war, invasion, act of foreign enemies
- rebellion, terrorism, revolution, insurrection, military or usurped power or civil war
- radiation or radioactivity
- natural catastrophe such as earthquake, hurricane, typhoon or volcanic activity or
- strikes, riots and civil commotion not confined to the employees, servants or agents of the *Contractor* and/or any Subcontractor
- the pandemic known as coronavirus (Covid-19) (and other variants of the same pandemic)."

"11.2(39) A Prohibited Act is

a) directly or indirectly offering, promising or giving any person working for or engaged by the *Client* a financial or other advantage to

- induce that person to perform improperly a relevant function or activity or
- reward that person for improper performance of a relevant function or activity

b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract

c) committing any offence:

- under the Bribery Act 2010
- under legislation or common law concerning fraudulent acts

d) defrauding, attempting to defraud or conspiring to defraud the *Client* or

e) any activity, practice or conduct which would constitute one of the offences listed under (a) to (d) above if such activity, practice or conduct had been carried out in the UK."

"11.2(40) Deleterious means any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

(a) Section 2 of the British Council for Offices / British Property Federation report entitled "Good Practice in the Selection of Construction Materials" (current at the time of specification, authorisation or use);

(b) relevant International Standards, British Standards or European Standards or Codes of Practice;

(c) any publications of the Building Research Establishment related to the specification of products or materials; or

(d) the Standards (if the Standards are applicable to the Works), all Applicable Law, Statutory Requirements, the Sustainable Development Plan and the instructions of the *Client*."

"11.2(41) Subcontractor Approval Form is attached in template form in Appendix 11"

"11.2(42) Free Issue Materials are Plant and Materials provided by the *Client* to the *Contractor* without any payment being required."

Z.2 **Interpretation and the Law**

Z.2.1 Delete **clause 12.1** and replace as follows:

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

- words in the singular also mean in the plural and the other way round
- words in the masculine also mean in the feminine and neuter and the other way round
- references to a document include any revision made to it in accordance with this contract
- references to a statute or statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and includes corresponding legislation in any other relevant part of the United Kingdom and any code of practice made or guidance issued under it and
- references to a standard include any current relevant standard that replaces it."

Z.3 **Communications**

Z.3.1 In **clause 13.7**, insert the word ", instruction" after "A notification"

Z.4 **The *Project Manager* and the *Supervisor***

Z.4.1 Delete **clause 14.1** and replace as follows:

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

- acceptance of a communication from the *Contractor* or
- acceptance of the *works*

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

Z.5 **Early Warning**

Z.5.1 Add the following additional bullet points to **clause 15.1**, after "delay Completion,"

- "change the Accepted Programme,
- adversely affect the *Client* by increasing the monies payable by the *Client* to Others
- change the forecast total Defined Cost for the whole of the *works*"

Add the following sentence after "*works* in use"

- "Items priced as a risk under the Contract and items included in Contract Data Part 1 by the *Client* and Contract Data Part 2 by the *Contractor* shall be included in the Early Warning Register"

Z.6 ***Contractor's* proposals**

Z6.1 Delete the second sentence in **clause 16.3** and replace with:

"A reason for not accepting is that:

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

Z.7 **Requirements for instructions**

Z.7.1 Add at the end of the first sentence of **clause 17.1**:

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

Z.7.2 NOT USED

Z.8 **Corrupt Acts**

Z.8.1 Add the following sentence at the end of **clause 18.1:**

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

- communicated to any person other than the *Client*, or a person duly authorised by the *Client*, the amount or approximate amount of the tender or submission, or proposed tender or submission, leading to this contract except where the disclosure, in confidence, of the approximate amount of the tender or submission was necessary to obtain insurance premium quotations required for the preparation of the tender or submission or

- entered into any agreement or arrangement with any person, or requested of any person, that it or they shall refrain from tendering or competing, that it or they shall withdraw any tender or submission once offered or that it or they will vary the amount of any tender or submission to be submitted."

Z.9 **Prevention**

Z.9.1 Delete **clause 19.1** and replace with the following:

"19.1 If a Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or

- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

the *Project Manager* gives an instruction to the *Contractor* stating how the event is to be dealt with."

Z.10 **Providing the Works**

Z.10.1 Add the following words to the end of **clause 20.1**, before the full stop

", in a proper and workmanlike manner and in compliance with Consents and Applicable Law"

Z.10.2 In clause 20.4 at the end of the first sentence add the following;

"in the form of forecast set out in the Scope."

Z10.3 Add a new **clause 20.5** as follows

"20.5 The *Contractor* shall not specify for use or use and the *Contractor* shall ensure that Subcontractors do not specify for use or use any goods, products, materials or substances which, at the time of specification

- are not approved or not recommended or
- are identified as being Deleterious in the particular circumstances in which they are specified for use or
- would not be specified or used by a contractor acting reasonably.

If the *Contractor* becomes aware that any such materials are being used or specified for use the *Contractor* will forthwith notify the *Client* in writing."

Z.11 Working with the *Client* and Others

Z.11.1 NOT USED

Z.12 Subcontracting

Z.12.1 Delete **clause 26.2** and replace as follows:

"26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance in accordance with the Subcontractor Approval Form attached at Appendix 11. [A reason for not accepting the Subcontractor is that

- the appointment will not allow the *Contractor* to Provide the Works or
- the *Client* is concerned (on reasonable grounds) about
- the financial standing or expertise or experience or insurance cover of the proposed Subcontractor or
- any breach of contract, negligence, late, incomplete or defective services or failure to rectify the same by the proposed Subcontractor in relation to any work previously performed (whether as a consultant or subcontractor) for the *Client* or
- the *Client* requires a collateral warranty and the Subcontractor is unable to provide a collateral warranty to the *Client* in a form which is acceptable to the *Client*.]

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has

- accepted such Subcontractor and, to the extent that these *conditions of contract* require,
- accepted the subcontract documents.

this clause 26.2 does not apply if the Subcontractor was approved by the *Client* during the tender process that resulted in the selection of the *Contractor*."

Z.12.2 Delete the first bullet point in **clause 26.3**

Z.12.3 Add the following bullet points after the words "A reason for not accepting the subcontract documents is that" in **clause 26.3**

- "they do not represent best value or open market or competitively tendered prices or
- they are inconsistent with the requirements of this contract or the policies of the *Client* or the Welsh Government or
- they limit rights under any collateral warranty agreement to be provided by the Subcontractor to a greater extent than the rights under this contract in relation to the relevant subcontracted *works* or"

Z.13 Other responsibilities

Z.13.1 Insert a new **clause 27.5** as follows

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

Z.13.2 Insert a new **clause 27.6** as follows

"27.6 The Contractor shall permit Others to access, use and occupy the Site or the works or part of them in order to carry out and complete their works. The Contractor shall coordinate the works by Others with the works so as to prevent or minimise any disruption or interference to Statutory Authorities' works caused by the carrying out of the works and vice versa."

Z.14 Assignment

Z.14.1 Delete **clause 28.1** and replace as follows:

"28.1 The *Client* may novate the contract or assign the benefit of the contract to any successor, replacement or alternative body exercising its functions (in whole or in part). The *Contractor* shall promptly execute any document necessary to give effect to any

such novation or assignment. The *Contractor* may not assign the benefit of the contract without the prior written consent of the *Client*."

Z.15 **Disclosure**

Z.15.1 Delete **clause 29.1** and replace as follows:

"29.1 The Parties do not disclose information obtained in connection with this contract except

- where expressly permitted under this contract
- with the written agreement of the other Party
- as necessary to carry out their duties under the contract
- to the extent necessary to comply with Applicable Law or the requirements of any Competent Authority or
- to a Party's professional advisers or auditors."

Z.16 **Starting, Completion and Key Dates**

Z.16.1 Add the following words to the end of **clause 30.1**

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

Z.17 **Revising the programme**

Z.17.1 Add the following sentence to the end of **clause 32.2:**

"Failure by the *Contractor* to provide any revised programme within 1 week of the due date entitles the *Client* to set off or withhold from any sums due to the *Contractor* a sum not exceeding five per cent (5%) of the Price for Work Done to Date, until the relevant programme is provided."

Z.18 **Access to and use of the Site**

Z.18.1 In **clause 33.1**, at the end of the second sentence, insert the words

"and is on a non-exclusive basis"

Z.19 **Quality management system**

Z.19.1 In **clause 40.3**, after the words "quality plan" add the words

"or quality policy statement"

Z.20 **Tests and inspections**

Z.20.1 Delete the words "applicable law" at the end of **clause 41.1** and replace with

"Applicable Law"

Z.20.2 Add a new **clause 41.8** as follows

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

Z.21 **Correcting Defects**

Z.21.1 Delete **clause 44.2** and replace as follows:

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

Z.21.2 Insert a new **clause 44.2A** as follows:

"44.2A In correcting any Defect, the *Contractor,* the Subcontractors and their personnel:

- cause the minimum amount of interference and disruption as is reasonably possible to the carrying out of other works at the Site and the use and/or occupation of the Site;
- comply with any reasonable directions and security precautions for the Site;
- comply with any Site access protocols,
- shall be accompanied if the *Client* so requires;
- make good as soon as reasonably practicable and in any event within any period stipulated by the *Project Manager* to the reasonable satisfaction of the *Project Manager* any loss, damage or injury thereby caused to the Site or any part or parts thereof or to the property of any occupiers and/or visitors at the Site; and

- at the end of each day ensure that the Site is left in a good and clean condition cleared of all unused materials, plant, goods and equipment."

Z.22 **Liability for Defects**

Z.22.1 Add a new **clause 47** as follows:

"47 Nothing in clauses 40 to 46 affects any other right or remedy under the contract or at law, including (without limitation) the *Client's* right to claim damages for a Defect."

Z.23 **Assessing the amount due**

Z.23.1 Add the following words to the end of the first sentence in **clause 50.2**:

"The *Contractor's* application also includes

- the breakdown of costs aligned with the cost reporting structure as detailed in the Scope,
- details of any rebates and discounts that the *Contractor* has received or anticipates receiving and
- (where requested by the *Project Manager*) a copy of the contract of employment and record of experience for any people for whom payment is claimed pursuant to cost component 1 (People) of the Schedule of Cost Components"

Z.23.2 Add a new **clause 50.10**

"50.10 In assessing the amount due, the *Project Manager* is entitled to retain up to 25% of the Price for Work Done to Date until the *Contractor*:

- provides any Subcontractor warranties required by the *Client* under this contract, duly executed
- submits to the *Project Manager* policies and certificates for the insurances required by this contract
- provides the *Client* with any parent or holding company guarantee required by this contract, duly executed
- provides the *Client* with any performance bond required by this contract, duly executed
- provides a cost forecast as described in the Scope."

Z.24 **Payment**

Z24.1 In the first sentence of **clause 51.1,** delete "one week" and insert "fourteen days".

Z24.2 In the first sentence of **clause 51.2** delete "three weeks" and insert "four weeks".

Z.24.3 In **clause 51.4**, delete the words

"and is compounded annually"

Z.25 **Defined Cost**

Z.25.1 Add the following additional bullet points to **clause 52.2**

- full accounts of all costs relating to the *works*,
- copies of enquiries, instructions and/or tender documentation and tender clarification documents in respect of subcontracts,
- copies of tenders received from Subcontractors,
- Information used to compile forecasts of Defined Cost for the *works,*
- "details of any rebates and discounts that the *Contractor* has received or anticipates receiving and
- copies of the contracts of employment for all people for whom payment is claimed pursuant to cost component 1 (People) of the Schedule of Cost Components"

Z25.2 In **clause 52.4** add the following before the full stop:

"and provide such access and verification as the *Project Manager* requests."

Z25.3 Add a new **clause 52.5**

"52.5 The *Contractor* shall provide to the *Project Manager* a report each week summarising the costs relating to the *works* in the preceding week and in respect of the *works* to date. Such reports shall also contain the *Contractor's* estimate of the costs to be incurred in respect of the *works* to Completion."

Z25.4 Add a new **clause 52.6**

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

Z25.5 Add a new **clause 52.7**

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

Z.26 Final assessment

Z.26.1 In **clause 53.1**, delete the words "thirteen weeks after the *Project Manager* issues a termination certificate" and replace with

- "(subject to clause 93.2 A3), thirteen weeks after the *Project* Manager issues a termination certificate"

Z.26.2 In **clause 53.3**, in the third bullet point within the paragraph commencing "If the contract includes Option W2, a Party", delete the words "within four weeks of the decision being made" and replace with

"within eight weeks of being informed of the *Adjudicator's* decision"

Z.26.3 In the second bullet point of **clause 53.4**, delete the words "within four weeks of that decision" and replace with

"within eight weeks of being informed of that decision"

Z.27 Compensation events

Z.27.1 Add the following bullet points to **clause 60.1(1)** after the words "changing the Scope except":

"● a change to the Scope to resolve any error, ambiguity or discrepancy

- in or between any documents forming part of the Scope for which the Contractor is responsible or assumes responsibility under this contract or

- between any documents forming part of the Scope for which the *Contractor* is responsible or assumes responsibility under this contract and the Applicable Law"

Z.27.2 Delete **clause 60.1(10)** and replace as follows:

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

- the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection."

Z.27.3 Delete **clause 60.1(13)**

Z.27.4 Delete **clause 60.1(19)** and replace as follows:

"60.1(19) A Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme"

Z.27.5 In **clause 60.1(20)**, insert the following wording before the full stop:

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

Z.27.6 **Add new clause 60.1(22)**

"The implementation of a compensation event under any other contract between the Client and the Contractor that has an effect on the Prices or the Accepted Programme on this Contract."

Z.28 **Notifying compensation events**

Z.28.1 Amend the final paragraph of **clause 61.3** to read as follows:

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

Z.28.2 Delete the first bullet point of the second paragraph of clause 61.4 and replace as follows:

"● arises by reason of any act, omission, breach or default (including, but not limited to any insolvency, or any failure to proceed regularly and diligently in accordance with clause 30.1 or any failure to use reasonable endeavours to prevent or reduce any delay in accordance with clause 30.1) of the *Contractor*, any Subcontractor or supplier, or any other person for whom the *Contractor* is responsible"

Z.29 **Assessing compensation events**

Z.29.1 Insert a new **clause 63.1A** as follows:

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

Z.29.2 In **clause 63.5** make the following changes

At the end of the first sentence delete the "." and insert "; and"

At the beginning of the second sentence delete the "A" and add "a"

At the end of the second sentence delete the "." and underneath insert the following

" provided always that the delay shall only be assessed as giving rise to a change in Completion Date

or a Key Date if and to the extent:

- that the compensation event is the principal cause of the delay, and
- the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

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

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

Z.29.3 Add a new **clause 63.12** as follows:

"63.12 Where a compensation event or its effect is in part attributable to the *Contractor's* fault, the Prices, the Completion Date and/or Key Dates are not changed to the extent attributable to the *Contractor's* fault. In this contract a "fault" of the *Contractor* includes any failure on the part of the *Contractor* or its Subcontractors (or its or their employees, agents or suppliers) to take any reasonable action to prevent the compensation event or its adverse effects, or any negligence or breach of this contract on the part of the *Contractor* or its Subcontractors (or its or their employees, agents or suppliers)"

Z.30 **Proposed instructions**

Z.30.1 Insert the following wording in **clause 65.2** after the words "The quotation is assessed as a compensation event":

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

Z.31 **The *Client's* title to Plant and Materials**

Z.31.1 Delete **clause 70** and replace with the following:

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

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

70.2 The off site materials bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond.

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

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

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

- title in the Plant and Materials has already passed to the *Client* under clause 70.5 or
- the *Contractor* demonstrates to the satisfaction of the *Project Manager* that the *Contractor* has unencumbered title in the Plant and Materials

70.5 The *Contractor's* title in Plant and Materials passes to the *Client* when it is brought within the Working Areas, but (subject to clause 80.1) the risk of loss or damage to the Plant and Materials remains with the *Contractor.*

70.6 The *Client's* title in Free Issue Materials remains with the *Client* upon the delivery of Free Issue Materials to the Working Areas but (subject to clause 80.1) the risk of loss or damage to the Free Issue Materials remains with the *Contractor.*

70.7 Where the *Contractor* is required to collect Free Issue Materials from a location outside the Working Areas the *Client's* title in Free Issue Materials passes to the *Contractor* upon collection and the *Contractor* shall be required to insure the same. When the Free Issue Materials are brought within the Working Areas the *Contractor's* title in the Free Issue Materials passes to the *Client*, but (subject to clause 80.1) the risk of loss or damage to the Free Issue Materials remains with the *Contractor.*

70.7 The *Contractor* does not remove Plant and Materials within the Working Areas from where it is stored except for use on the *works* or with the *Project Manager's* permission."

Z.32 Objects and materials within the Site

Z.32.1 Insert a new **clause 73.3** as follows

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

Z32.2 **Vesting Agreement**

Insert a new **clause 73.4** as follows

"73.4 At the Client's request the Contractor will enter into and will procure that a Subcontractor or supplier enters into a Vesting Agreement substantially in the form attached at Appendix 14 (subject to amendments by the parties acting reasonably.)"

Z32.3 **Advance Payment Bond**

Insert a new **clause 73.5** as follows

"73.5 At the *Client's* request the *Contractor* will procure the provision of an Advance Payment Bond substantially in the form attached at Appendix 10 (subject to amendments by the parties acting reasonably)."

Z33 ***Contractor's* liabilities**

Z.33.1 Add the following new bullet point in **clause 81.1**:

- "fraud or fraudulent misrepresentation by the *Contractor*"

Z34 **Insurance cover**

Z34.1 Delete clause 83 and replace with

83.1 The *Contractor* and the *Client* shall provide the insurances stated in the Insurance Table at clause 83.2. The *Contractor* shall provide additional insurances as stated in the Contract Data.

Insert Clause 83.2

Insurance Against	**Party responsible for ensuring insurance is in place**	**Minimum amount of cover or minimum amount of indemnity**
Construction All Risks insurance	*Contractor* in the joint names of the Parties	The full reinstatement value of the works including the amount stated in the Contract Data

All risks of loss of or damage to (not excluded by the terms and conditions of the policy) the works and Plant and Materials, temporary works (ie works erected or constructed for the purpose of making possible the erection or installation of the works), equipment, temporary buildings and property owned by or supplied by the *Client*		for the replacement of any Plant and Materials provided by the *Client*
Loss of or damage to Equipment Loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the *Contractor*	*Contractor*	The replacement cost
Public Liability Insurance All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and / or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms	*Contractor* in the joint names of the Parties	The amount stated in the Contract Data *Client* to cover top-up PLI for not less than GBP £155,000,000 per occurrence. (*Contractor* to pay for any deductibles on this *Client* policy)

and conditions of the policy).		
Employer's liability insurance Liability for death of or bodily injury or illness sustained by employees of the *Contractor* arising out of or in the course of their employment in connection with this contract or the project	*Contractor*	The greater of the amount required by the Applicable Law and the amount stated in the Contract Data for any one event

Z.35 **Termination**

Z.35.1 In the Termination Table in **clause 90.2**, delete the words "R1-R15, R18 or R22" and replace with

- "R1-R15, R18, R22 or R23"

Z.35.2 In **clause 90.3**, delete the words "if the *Client* terminates for one of reasons R1 to R15, R18 or R22" and replace with

"if the *Client* terminates for one of reasons R1 to R15, R22 or R23"

Z.36 **Reasons for termination**

Z.36.1 Delete **clause 91.7** and replace as follows

"91.7 The *Client* may terminate if a Prevention Event occurs which

- stops the *Contractor* completing the whole of the *works* or
- stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *works* by more than thirteen weeks (R21)"

Z.36.2 Add a new **clause 91.9** as follows

"91.9 The *Client* may terminate if (R23)

- the *Contractor* has been found to have engaged in the practice of "blacklisting" (as set out in The Employment Relations Act 1999 (Blacklists) Regulations 2010) and failed to disclose such practices during the tender

period for the award of this contract or during this contract

- the *Contractor* is in breach of clause Z.52
- the *Contractor* is in breach of clause Z.53
- the *Contractor* is in breach of clause Z.55."

Z.37 **Procedures on termination**

Z.37.1 Add a new **clause 92.3** as follows

"92.3 Upon termination of this contract (howsoever terminated) the *Contractor*:

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

Z.38 **Payment on termination**

Z.38.1 Delete the wording of **A3 in clause 93.2** and replace with:

"A3 A deduction of any loss or costs incurred by the *Client* as a result of such termination including the additional cost to the *Client* of completing the whole of the *works* and after termination the *Client* shall not be obliged to make any further payment until the full extent of loss or costs can be fully ascertained and in the event that such loss or cost exceeds the amount otherwise payable to the *Contractor* in accordance with this contract, without prejudice to any other right or remedy of the *Client*, the *Client* may recover such excess from the *Contractor* as a debt."

Z.38.2 Add the following words to the end of **clause 93.2**

"Other than any payment which may become due under clause 93, the *Client* shall not be liable to the *Contractor* for any costs, expenses, disbursements or losses (including any indirect or consequential losses, such as loss of profit) which may arise

as a result of the termination of the contract. Save as aforesaid, any termination of the *Contractor's* engagement under this contract is without prejudice to the Parties' rights and remedies accrued up to the date of termination, which shall survive such termination"

Z.39 **Option W2**

Z.39.1 Delete the second sentence of **clause W2.4(2)** and replace with:

"The dispute may not be referred to the *tribunal* unless this notification is given within eight weeks of being informed of the *Adjudicator's* decision"

Z.40 **Secondary Option X14**

Z.40.1 Delete the last two sentences of clause X14.2 and replace with:

"The bond is for the amount of the advanced payment which the *Contractor* has not repaid and is in the form set out in Appendix 10 to this Contract."

Z.41 **Secondary Option X18**

Z.41.1 In **clause X18.5** add the following new bullet points:

- "death or injury to third parties as a consequence of the *works*
- liability resulting from fraud, fraudulent misrepresentation or deliberate damage
- liability in respect of which sums have been recovered (or would have been recovered but for an act or omission by or on the part of the *Contractor*) under any insurance policies required to be taken out by the *Contractor* under this contract"

Z42 **Secondary Option Y(UK)1**

Z42.1 In clause Y(UK)1.2 add the following to the end of the sentence;

"If the *Contractor* fails to provide a Project Bank Account within three weeks of the Contract Date the *Client* shall be entitled to set off or withhold from any sums due to the *Contractor* a sum not exceeding twenty five per cent (25%) of the Price for the Work Done to Date."

Z.43 **Secondary Option Y(UK)2**

Z43.1 In **clause Y2.2** in the first sentence delete "seven" and insert "fourteen"

Z43.2 In **clause Y2.2**, after "if the *Project Manager* has issued a termination certificate" add

"(subject to clause 93.2 A3)"

Z.43.3 In **clause Y2.4**, delete the words "reasons R1 to R15, R18 or R22" and replace with "reasons R1 to R15, R18, R22 or R23"

Z.44 **Schedule of Cost Components**

Z.44.1 Delete the following from **People 1**

"13

(d) medical examinations

(o) safety training”

Z44.2 Add the following to People 1:

(p) the residual value at completion of plant purchased by the *Client* for the use by the *Contractor* which is retained by the *Contractor* after completion.

Supplementary Conditions of Contract

Z45 **Contractor Warranty**

Z45.1 The *Contractor* shall provide on the Contract Date and/or within fourteen (14) days of a request from the *Project Manager* deeds of collateral warranty in substantially the form set out at Appendix 4 of this contract as may reasonably be amended by the *Client* in favour of:

(a) Welsh Government

(b) Network Rail

(c) persons providing finance in connection with (including any security agent or trustee), or purchasers and tenants of the whole or any part of, the *works*

(d) any beneficiary indicated by the *Client*

(e) developers having or acquiring an interest in whole or any part of the *works*, or

(f) any other party referred to in the Contract Data

Z46 **Subcontractor's Collateral Warranties**

Z46.1 The *Contractor* shall procure on the date the subcontract is entered into (in the case of the *Client*) and within fourteen (14) days of request (in the case of all other parties) that the Subcontractors' names and/or identified by discipline shall execute and deliver to the *Project Manager*, deeds of warranty in substantially the form set out in Appendix 5 of this contract in favour of:

(a) Welsh Government

(b) Network Rail

(c) the *Client*

(d) persons providing finance in connection with (including any security agent or trustee), or purchasers and tenants of the whole of any part of the *works*

(e) any beneficiary indicated by the *Client*

(f) developers having or acquiring an interest in whole or any part of the *works*, or

(g) any other party named in the Contract Data

If the *Contractor* is unable to procure and deliver to the *Client*, any requisite deed of warranty in the appropriate form on the date the subcontract is entered into or within fourteen (14) days of the *Client's* request (as required), the *Contractor* without prejudice to the *Client's* rights and remedies consults with the *Client* as to what steps

can reasonably be taken to procure the outstanding warranty and safeguard the *Client's* interests.

The *Contractor* is also to provide to the *Client* a certified copy of the Subcontractor's subcontract at the same time as the executed warranty.

Z47 **Manufacturer's Warranties**

Z47.1 The *Contractor* shall ensure that materials and equipment suppliers agree to provide their warranties for no fewer than twenty four (24) months from the *defects date* and that the suppliers assign the warranties to either the *Client* or Network Rail at no cost to the *Client* or Network Rail.

Z47.2 The *Contractor* shall supply to the *Client* manufacturers' warranties in favour of the *Client* for all plant equipment machinery and apparatus comprised in the *works,* in each case on terms which are satisfactory to the *Client* (acting reasonably)

Z48 **Failure to provide Warranties**

If the *Contractor* fails to provide or procure the warranties validly requested by the *Client* under clauses Z45, Z46 and Z47 within fourteen (14) days of a request by the *Client*, the *Client* shall be entitled to set off or withhold from any sums due to the *Contractor* a sum not exceeding twenty five per cent (25%) of the Price for the Work Done to Date, where such monies relate to any element of the *works* for which the provider of the warranty is responsible.

Z.49 **Fair Payment**

Z.49.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Project Manager*.

Z.49.2 The *Contractor* includes in the contract with each Subcontractor:

- a period for payment of the amount due to the Subcontractor not greater than 26 days after the due date in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,

- a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 30 days after the due date in this contract and

- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

Z.50 **Confidentiality and Freedom of Information Act**

Z.50.1 In this clause

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

- which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the General Data Protection Regulations) or
- the release of which is likely to prejudice the commercial interests of the *Client* or the *Contractor* respectively or
- which is a trade secret.

FOIA means the Freedom of Information Act 2000

EIR means the Environmental Information Regulations.

Z.50.2 In respect of any Confidential Information it may receive from the other Party (the "**Discloser**") and subject always to the terms of this clause Z.50, each Party (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that

- the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the contract
- the provisions of this clause Z.50 shall not apply to any Confidential Information which
  - (a) is in or enters the public domain other than by breach of the contract or other act omissions of the Recipient or
  - (b) is obtained by a third party who is lawfully authorised to disclose it or
  - (c) is authorised for release by the prior written consent of the Discloser or
  - (d) the disclosure of which is required to ensure the compliance of the *Client* with the FOIA/EIR and/or any applicable guidance or codes of practice.

Z.50.3 Nothing in this clause Z.50 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Applicable Law or, where the *Contractor* is the Recipient, to the *Contractor's* immediate or ultimate holding company provided that the *Contractor* procures that such holding company complies with this clause Z.50 as if any reference to the *Contractor* in this clause Z.50 were a reference to such holding company.

Z.50.4 The *Contractor* acknowledges that the *Client* is subject to the FOIA/EIR. The *Contractor* notes and acknowledges the FOIA/EIR and the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are used under sections 45 and 46 of the FOIA respectively) together with any code of practice or guidance on the application of the EIR as may be issued, amended, updated or replaced from time to time. The *Contractor* will act in accordance with the FOIA/EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the *Contractor* from time to time) to the extent that they apply to the *Contractor's* performance under the contract.

Z.50.5 The *Contractor* agrees that:

- without prejudice to the generality of clause Z.50.4, the provisions of this clause Z.50 are subject to the respective obligations and commitments of the *Client* under the FOIA/EIR and the Code of Practice
- subject to clause Z.50.6, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the *Client*
- where the *Client* is managing a request under the FOIA/EIR, the *Contractor* shall co-operate with the *Client* and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

Z.50.6 The *Client* will consult the *Contractor* in relation to any request for disclosure of the *Contractor's* Confidential Information in accordance with all applicable guidance.

Z.50.7 This clause Z.50 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. This clause shall otherwise remain in force for a period of 3 years after Completion or the termination of this contract.

Z.51 Data Protection

Z.51.1 For the purpose of this clause Z.51, the following definitions apply:

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

Data Protection Legislation means the General Data Protection Regulations (GDPR).

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

Personal Data means personal data as defined in the Data Protection Legislation

Z.51.2 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause Z.51 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

Z.51.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the data controller and the *Contractor* is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation). The *Contractor* may process Personal Data in order to perform the *works* for the duration of this contract. Clauses Z.51.9 – Z.51.11 set out the types of Personal Data and categories of data subject that the *Contractor* may process under this contract.

Z.51.4 Without prejudice to the generality of clause Z.51.2, the *Client* will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the *Contractor* for the duration and purposes of this contract.

Z.51.5 Without prejudice to the generality of clause Z.51.2, the *Contractor* shall, in relation to any Personal Data processed in connection with the performance of its obligations under this contract

(a) process that Personal Data only on the written instructions of the *Client* unless the *Contractor* is required by the Applicable Laws to process Personal Data. Where the *Contractor* is relying on the Applicable Laws as the basis for processing Personal Data, the *Contractor* shall promptly notify the *Contractor* of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the *Contractor* from so notifying the *Client*

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the *Client*, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it)

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and do not process Personal Data except in accordance with this contract

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the *Client* has been obtained and the following conditions are fulfilled

i. the *Client* or the *Contractor* have provided appropriate safeguards in relation to the transfer

ii. the data subject has enforceable rights and effective legal remedies

iii. the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred and

iv. the *Contractor* complies with reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data

(e) assist the *Client* in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators

(f) notify the *Client* without undue delay on becoming aware of a Personal Data breach

(g) at the written direction of the *Client*, delete or return Personal Data and copies thereof to the *Client* on termination of the contract unless required by the Applicable Laws to store the Personal Data

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause Z.51 and allow for audits by the *Client* or the *Client's* designated auditor

(i) notify the *Client* immediately if it

i. receives a Data Subject Access Request (or purported Data Subject Access Request)

ii. receives a request to rectify, block or erase any Personal Data

iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation

iv. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract

v. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or

vi. becomes aware of a Data Loss Event.

The *Contractor* obligation to notify under clause Z.51.5(i) shall include the provision of further information to the *Client* in phases, as details become available.

Z.51.6 Before allowing any sub-processor to process any Personal Data related to this contract, the *Contractor* must

(a) notify the *Client* in writing of the intended sub-processor and processing

(b) obtain the written consent of the *Client*

(c) enter into a written agreement with the sub-processor which gives effect to the terms set out in this clause Z.51 such that they apply to the sub-processor and

(d) provide the *Client* with such information regarding the sub-processor as the *Client* may reasonably require.

Z.51.7 The *Client* may, at any time on not less than 30 days' notice, revise this clause Z.51 by

(a) replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this contract) or

(b) amending it to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Z.51.8 The provisions of this clause shall apply during the contract and indefinitely after its expiry or termination.

Z.51.9 The *Contractor* may process Personal Data of the following types

(a) name and

(b) contact details.

Z.51.10 The *Contractor* may process sensitive Personal Data of the following types

(a) physical or mental health details.

Z.51.11 The *Contractor* may process Personal Data relating to the *Client's*

(a) employees and

(b) customers and clients.

Z.52 The Public Contracts Regulations 2015

Z.52.1 The *Client* may terminate the *Contractor's* obligation to Provide the Works if any of the provisions if paragraph 73(1) of The Public Contracts Regulations 2015 apply.

Z.52.2 If the *Client* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the contract was terminated for reason R11.

Z.52.3 If the *Client* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations, the procedures and amounts due on termination are the same as if the contract was terminated for reason R23.

Z.52.4 The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

Z.53 Audit and Inspection

Z.53.1 The *Contractor* provides all facilities and allows the *Client*, its representatives, its auditors, any third party providing funding, or anyone with a statutory or other legal right to inspect or audit the *Client* full access to conduct any audit investigation of the contract. This includes access to:

- all premises owned or occupied by the *Contractor*
- all documents in the possession, custody or control of the *Contractor* used in Providing the Works and valuation of compensation events;
- all technology, resources, systems and procedures used or to be used in Providing the Works;

  and
- the *Contractor's* employees, Subcontractors, the Subcontractors' employees and *key persons* who are Providing the Works.

Z.53.2 The *Client* reserves the right to undertake audits as it may deem appropriate including but not limited to:

- *works* content and establishment of the Prices;
- valuation of compensation events;
- health and safety;
- details of data input to corporate systems regarding customer service.

Z.53.3 The *Contractor* is required to provide all reasonable assistance to the *Client* in undertaking the audits and to provide to the *Client*, in a timely manner, such information and data as may be necessary effectively to complete them.

Z.53.4 Where the findings from the *Client's* audit confirms concerns in respect of any of the above issues detailed in clause Z.53.2, requiring the *Client* having to undertake further audits and incurring additional costs, the *Contractor* shall be liable for all such additional costs and such costs shall be deducted from any payments due to the *Contractor* under this contract or any other contract with the *Client*.

Z.54 Construction (Design and Management) Regulations 2015

Z.54.1 The *Contractor* is to comply with its obligations under the Construction (Design and Management) Regulations 2015.

Z.54.2 The Contractor is appointed as Principal Contractor in accordance with the Construction (Design and Management) Regulations 2015 and is to carry out and complete the duties and obligations of Principal Contractor under the Construction (Design and Management) Regulations 2015.

Z.55 Contamination and nuisance

Z.55.1 The *Contractor* takes all reasonable steps to protect the environment (both on and off the Site) and to avoid or limit damage to people and property resulting from contamination, pollution or the *Contractor's* operations on the Site.

Z.55.2 The *Contractor* at all times takes all practical steps to prevent any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or Statutory Authority or statutory undertaker arising out of the carrying out of the *works* or any other obligation pursuant to this contract and the *Contractor* shall assist the *Client* in defending any action or proceedings which may be instituted in relation thereto.

Z.55.3 The *Contractor* ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the *works* or of any obligation pursuant to this contract.

Z55.4 Without prejudice to the *Contractor's* obligations under clause Z55.1 if the carrying out of the Works is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Client* shall obtain the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Client* (such approval not to be unreasonably withheld or delayed). The *Contractor* shall comply (at its own cost) in every respect with the conditions contained in such agreements.

Z.56 **Third Party Agreements**

Z.56.1 Copies of the whole or parts of the following agreements:

- **[LIST AGREEMENTS]**

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

Z.56.2 The *Contractor* Provides the Works in conformity with the *Client's* obligations under the Third Party Agreements including, without limitation, those obligations relating to the provision of notice and permitting inspections before Completion of the *works* is certified.

Z.56.3 The *Contractor* Provides the Works in such manner and at such times so that no act, omission or default of the *Contractor* or any employee, Subcontractor or supplier of the *Contractor* shall constitute, cause or contribute to any breach by the *Client* of any of its obligations under the Third Party Agreements.

Z57 **Collaborative Working**

Z57.1 In carrying out the *works*, the *Contractor* shall work in a collaborative manner with the *Client*, the *Project Manager*, and the *Supervisor*, any other consultants engaged by the *Client*, and stakeholders and Others.

Z57.2 The *Contractor* shall coordinate its activities with those of others as required by the Scope and in accordance with the instruction of the *Project Manager*, the *Supervisor* and the *Client*.

Z57.3 The *Contractor* shall cooperate with the *Client* and Others in obtaining and providing information which they need in connection with their works and the *works*.

Z57.5 Where necessary to provide the *works*, the *Contractor* shall hold or attend meetings with others. The *Contractor* shall inform the *Project Manager* of these meetings beforehand and the *Project Manager* and the *Client* may attend them.

Z57.6 The *Contractor* shall provide the *works* and correct Defects in such a way as not to cause delay or disruption to the *Client* and / or Others. In the event that providing the *works* or correcting the Defects causes delay or disruption to the *Client* and / or Others, the *Contractor* shall take all reasonable steps to mitigate and minimise such delay or disruption.

Z58 **Performance Bond**

Z58.1 When required by the *Client,* the *Contractor* shall provide a Performance Bond in accordance with the Contract Data in the form attached at Appendix 6 (any amendment to be reasonably agreed by the *Client*) and it shall be maintained until the required date.

Z59 **Assignment**

Z59.1 The *Contractor* shall not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Client*.

Z59.2 The *Client* may assign in whole or in part any benefit or right under this contract at any time to any person without the consent of the *Contractor* being required. In addition, the *Client* may assign or transfer all or any rights under or arising out of this contract at any time without the prior consent of the *Contractor* to a third party in which the Welsh Government shall have a controlling interest taking a valid assignment of the benefit of the *Client's* interest in this contract and the Parties shall do all things necessary to give effect to this clause Z.59. The *Client* shall use all reasonable endeavours to provide prior written notice to the *Contractor* of any change in assignment no less than fourteen (14) days prior to such assignment but for the avoidance of doubt, any failure to give such notice shall not affect the validity of such assignment.

Z60 **Parent Company Guarantee**

Z60.1 Where indicated in the Contract Data or required by the *Client*, the *Contractor* shall enter into a Parent Company Guarantee in the form attached at Appendix 7 (any amendment to be reasonably agreed by the *Client*).

Appendix 3- Scope

[insert]

Appendix 4 – Contractor Warranty

Date: [•]

(1) [CONTRACTOR] ("Contractor")

(2) [BENEFICIARY] ("Beneficiary")

(3) TRANSPORT FOR WALES / TRANSPORT FOR WALES RAIL LTD ("Client")

Collateral Warranty: Contractor to [Funder / Tenant / Welsh Government / Purchaser / Other Beneficiary]

relating to

[PROJECT NAME]

BLAKE MORGAN

Blake Morgan LLP
One Central Square
Cardiff CF10 1FS
www.blakemorgan.co.uk

THIS DEED IS MADE THE [•] DAY OF [•] 20[•]

BETWEEN

(1) [**CONTRACTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Contractor**"); and

(2) [**BENEFICIARY**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Beneficiary**"); and

(3) [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH (the "**Client**")

BACKGROUND

(A) In accordance with a Contract dated [x] the Client has engaged the Contractor to carry out the Works [describe the Project and the Site] as set out in the Contract ("the Works").

(B) The Beneficiary, as [insert interest], has an interest in the Works.

(C) The Client requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.

(D) The Contractor has agreed to enter into this Deed with the Beneficiary, for the benefit of the Beneficiary.

CONSIDERATION

In consideration of the payment of the £1 by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges, the Contractor has agreed to enter into this deed with the Beneficiary.

AGREED TERMS

1 DEFINITIONS

1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them as in the Contract. The following terms have the following meanings:

Completion	occurs when the *Project Manager* certifies completion of the Works under the Contract.
Contract	means the Conditions of Contract between the Client and the Contractor dated [•]
Deleterious Materials	any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular

circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

(a) Section 2 of the British Council for Offices / British Property Federation report entitled "Good Practice in the Selection of Construction Materials" (current at the time of specification, authorisation or use);

(b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice;

(c) any publications of the Building Research Establishment related to the specification of products or materials; or

(d) the Standards (if the Standards are applicable to the Works), all applicable law, Statutory Requirements, the Sustainable Development Plan and the instructions of the Client.

Funder the person that has provided, or is to provide, finance in connection with: (a) the whole or any part of the Project or the completed Project; or (b) the whole or any part of the Site, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Intellectual Property all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.

Material all the designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and

	any other materials and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them, prepared or to be prepared by or on behalf of the Contractor in connection with Works.
Party	a party to this Deed
Permitted Uses	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension (but not to reproduce the designs contained in the Material in any such extension) building information modelling and repair of the Project.
Project	[x]
Site	[TBC]
Working Day	means a day other than a Saturday or Sunday, or a public holiday in Wales.
Works	the works provided by the Contractor in accordance with the Contract.

2 CONTRACTOR'S OBLIGATIONS

2.1 The Contractor warrants to the Beneficiary that:

2.1.1 it has complied, and shall continue to comply, with its obligations under the Contract;

2.1.2 it has executed, and shall continue to execute, the Works in a good and workmanlike manner;

2.1.3 it has exercised and shall continue to exercise reasonable skill and care when selecting goods, materials, plant and equipment for incorporation in the Project; and

2.1.4 has not and will not specify or use Deleterious Materials in the Project.

2.2 The Contractor recognises that the Beneficiary has relied on or will rely upon the Contractor's skill and care and on the full and proper performance of the Contractor's obligations under the Contract.

2.3 In proceedings for breach of this clause 2, the Contractor may:

2.3.1 rely on any limit of liability or other term of the Contract; and

2.3.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint Client, with the Client, under the Contract for this purpose not taking into account any set-off or counterclaim against the actual Client under the contract.

2.4 The Contractor's duties or liabilities under this Deed shall not be negated or diminished by any:

2.4.1 approval or inspection of any specifications for the Works; or

2.4.2 testing of any work, goods, materials, plant or equipment; or

2.4.3 omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client.

2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Contractor.

2.6 The Contractor acknowledges that no amendment to or variation to the contract nor any waiver, release, settlement or estoppels in respect of any of the Contractor's obligations under the Contract shall in any way affect the Contractor's obligations to the Beneficiary pursuant to this Deed except in circumstances where the Beneficiary has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.

3 STEP-IN RIGHTS: CONTRACTOR MAY NOT TERMINATE OR DISCONTINUE

3.1 The Contractor shall not exercise, or seek to exercise, any right to:

3.1.1 terminate its employment under the Contract or

3.1.2 discontinue performance of the Works

for any reason (including any breach on the part of the Client) without giving the Beneficiary at least twenty (20) Working Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination or discontinuance.

3.2 The Contractor's right to terminate its employment under the Contract, or to discontinue performance of the Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Contractor, copied to the Client:

3.2.1 requiring the Contractor not to terminate its employment or not to discontinue performance of the Works under the Contract;

3.2.2 acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the contract; and

3.2.3 undertaking that the Beneficiary or its nominee will pay to the Contractor:

(a) any sums due and payable to the Contractor under the Contract in future; and

(b) any sums then due and payable to the Contractor under the Contract that are unpaid.

3.3 If the Beneficiary (or its nominee) serves notice on the Contractor under clause 3.3, then, from the date of service of the notice, the Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Client).

3.4 In complying with this clause 3, the Contractor:

3.4.1 does not waive any breach of the Contract or default under by the Client; and

3.4.2 may exercise its right to terminate its employment under the contract, or discontinue performance of the Works, after the expiry of the notice period referred to in clause 3.1, unless the Contractor's right to terminate or discontinue has ceased under clause 3.3.]

4 STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN

4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Contractor, copied to the Client, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Contract; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice,

4.1.3 the contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (or its nominee), to the exclusion of the Client;

4.1.4 The parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated contract as a stand-alone document.

4.2 The Contractor shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Contractor does not waive any breach of the Contract or default under the Contract.

5 STEP-IN RIGHTS: CONTRACTOR'S POSITION AND CLIENT'S CONSENT

5.1 The Contractor shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this Deed to confirm its consent to the agreement.

6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.

7 NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY

Unless the Beneficiary has stepped-in under clause 3 or clause 4, the Beneficiary may not give instructions to the Contractor under this Deed.

8 PRIORITY OF STEP-IN

Where the Contractor has given rights in relation to the Contract similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under clause 3 or clause 4, the notice served by the Beneficiary shall prevail.

9 INTELLECTUAL PROPERTY

9.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material and any Intellectual Property contained in the Material prepared by, or on behalf of, the Contractor for any purpose relating to the Project, including any of the Permitted Uses.

9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.

9.3 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and / or provided.

9.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

9.5 In respect of any Material prepared by, or on behalf of, the Contractor (and which is being used for the purposes for which it was provided) the Contractor shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and *expenses* which may be brought or made against the Beneficiary or to which the Beneficiary may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

10 LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Contractor under this Deed after 12 years from the date of Completion.

11 ASSIGNMENT

11.1 The Contractor may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.

11.2 The Beneficiary may assign the benefit of this Deed:

11.2.1 on two occasions to any person; and

11.2.2 without counting as an assignment under clause 11.2.1;

11.2.3 by way of security to a Funder (including any reassignment on redemption of security); or

11.2.4 to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

12 NOTICES

12.1 Each notice or other communication ("Notice") to be given under this Deed shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt Notice shall not be validly served by e-mail.

12.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on five (5) Working Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other Party at the address set out below:

12.2.1 Beneficiary:

[ADDRESS]

Attention: [CONTACT]

12.2.2 Contractor:

[ADDRESS]

Attention: [CONTACT]

12.2.3 Client:

[ADDRESS]

Attention: [CONTACT]

12.3 Any Notice given by any Party shall be deemed to have been received:

12.3.1 if given by hand, at the time of day of actual delivery;

12.3.2 if posted, by 10am on the second Working Day following the Working Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

12.3.3 if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

13 THIRD PARTY RIGHTS

A person who is not a Party to this Deed shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

14 GOVERNING LAW AND JURISDICTION

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

14.2 The Parties irrevocably agree that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Client directs that the High Court in London (or elsewhere) should have jurisdiction) to settle any disputes which may arise out of or in connection with this Deed and / or its subject matter or formation (including non-contractual disputes or claims).

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

[DN: Execution clauses to be inserted]

Appendix 5
The Contractor's Subcontractor Warranties

[**DN:** this draft warranty can also apply to a sub-consultant to the Contractor with amendment]

Date: [•]

(1) [SUBCONTRACTOR] ("Subcontractor")

(2) [CONTRACTOR] ("Contractor")

(3) TRANSPORT FOR WALES / TRANSPORT FOR WALES RAIL LTD ("Client") OR [BENEFICIARY] ("Beneficiary")

Collateral Warranty: Subcontractor to [Client] / [Funder / Welsh Government / Tenant / Purchaser / Other Beneficiary]

relating to

[PROJECT NAME]

Blake Morgan LLP
One Central Square
Cardiff CF10 1FS
www.blakemorgan.co.uk

THIS DEED IS MADE THE [•] DAY OF [•] 20[•]

BETWEEN

(1) [**SUBCONTRACTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Subcontractor"); and

(2) [**CONTRACTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Contractor**"). and

(3) [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH (the "**Client**")

OR

[[**BENEFICIARY**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Beneficiary**")]

BACKGROUND

(A) The Contractor has engaged the Subcontractor to carry out the [describe the nature of the services / works] in relation to the Project.

(B) The Beneficiary, as [insert interest], has an interest in the Works.

(C) The Contractor requires the Subcontractor to enter into a collateral warranty in favour of the [Client / Beneficiary].

(D) The Subcontractor has agreed to enter into this Deed with the [Beneficiary and / or Client] for the benefit of the [Client / Beneficiary].

CONSIDERATION

In consideration of the payment of £1 by the [Client / Beneficiary] to the Subcontractor receipt of which the Subcontractor acknowledges, the Subcontractor has agreed to enter into this deed with the [Client / Beneficiary]

AGREED TERMS

1 DEFINITIONS

1.1 In this Deed unless otherwise stated defined terms shall have the same meaning ascribed to them as in the Contract. The following terms have the following meanings:

Completion occurs when the *Project Manager* certifies completion of the Works under the Contract.

Contract the Conditions of Contract dated [•] between the Client and the Contractor in respect of the Project.

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

(a) Section 2 of the British Council for Offices / British Property Federation report entitled "Good Practice in the Selection of Construction Materials" (current at the time of specification, authorisation or use);

(b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice;

(c) any publications of the Building Research Establishment related to the specification of products or materials; or

(d) the Standards (if the Standards are applicable to the Works), all applicable law, Statutory Requirements, the Sustainable Development Plan and the instructions of the Client.

Funder the person that has provided, or is to provide, finance in connection with: (a) the whole or any part of the Project or the completed Project; or (b) the whole or any part of the Site, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Intellectual Property	all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.
Materials	all the designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them, prepared or to be prepared by or on behalf of the Sub Contractor in connection with the Works.
Party	a party to this Deed
Permitted Uses	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension (but not to reproduce the designs contained in the Material in any such extension) building information modelling and repair of the Project.
Project	[TBC]
Site	[TBC]
Sub-Contract	The agreement in writing between the Contractor and Subcontractor dated [•] under which the Subcontractor is to carry out and complete the Subcontractor Works.
Subcontractor Works	The services and or works relating to the Works which the Sub-Consultant is to perform under the Sub Contract.
Working Day	a day other than a Saturday or Sunday, or a public holiday in Wales.

Works	the works provided by the Contractor in accordance with the Contract.

2 SUBCONTRACTOR'S OBLIGATIONS

2.1 The Subcontractor warrants to the [Client / Beneficiary] that:

2.1.1 it has complied, and shall continue to comply, with its obligations under the Sub-Contract;

2.1.2 it has executed, and shall continue to execute, the Subcontractor Works in a good and workmanlike manner;

2.1.3 it has exercised and shall continue to exercise reasonable skill and care when selecting goods, materials, plant and equipment for incorporation in the Project; and

2.1.4 has not and will not specify or use Deleterious Materials in the Project.

2.2 The Subcontractor recognises that the [Client / Beneficiary] has relied on or will rely upon the Subcontractor's skill and care and on the full and proper performance of the Sub-Contractor's obligations under the Sub-Contract.

2.3 In proceedings for breach of this clause 2, the Subcontractor may:

2.3.1 rely on any limit of liability or other term of the Sub-Contract; and

2.3.2 raise equivalent rights of defence as it would have had if the [Client / Beneficiary] had been named as a joint Client, with the Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the Contractor under the contract).

2.4 The Subcontractor's duties or liabilities under this Deed shall not be negated or diminished by any:

2.4.1 approval or inspection of any specifications for the Subcontractor Works; or

2.4.2 testing of any work, goods, materials, plant or equipment; or

2.4.3 omission to approve, inspect or test,

by or on behalf of the [Client / Beneficiary] or the Contractor.

2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the [Client / Beneficiary] by the Subcontractor.

2.6 The Subcontractor acknowledges that no amendment to or variation to the Sub-Contract nor any waiver, release, settlement or estoppels in respect of any of the Subcontractor's obligations under the Sub-Contract shall in any way affect the Subcontractor's obligations to the [Client / Beneficiary] pursuant to this Deed except in circumstances where the [Client / Beneficiary] has given its prior written consent to such amendment, variation, waiver, release, settlement or estoppel.

3 STEP-IN RIGHTS: SUBCONTRACTOR MAY NOT TERMINATE OR DISCONTINUE

3.1 The Subcontractor shall not exercise, or seek to exercise, any right to:

3.1.1 terminate its employment under the Sub-Contract or

3.1.2 discontinue performance of the Sub-Contractor Works

for any reason (including any breach on the part of the Contractor) without giving the [Client / Beneficiary] at least twenty (20) Working Days' written notice of its intention to do so. Any notice from the Subcontractor shall specify the grounds for the Subcontractor's proposed termination or discontinuance.

3.2 If the Sub-Contract allows the Subcontractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 3.1.

3.3 The Subcontractor's right to terminate its employment under the Sub-Contract, or to discontinue performance of the Subcontractor Works shall cease if, within the period referred to in clause 3.1, the [Client / Beneficiary] gives notice to the Subcontractor, copied to the Contractor;

3.3.1 requiring the Subcontractor not to terminate its employment or not to discontinue performance of the Sub-Contractor Works under the Sub-contract;

3.3.2 acknowledging that the [Client / Beneficiary] (or its nominee) will assume all the Contractor's obligations under the Sub-contract; and

3.3.3 undertaking that the [Client / Beneficiary] or its nominee will pay to the Subcontractor:

(a) any sums due and payable to the Subcontractor under the Sub-contract in future; and

(b) any sums then due and payable to the Subcontractor under the Sub-contract that are unpaid.

3.4 If the [Client / Beneficiary] (or its nominee) serves notice on the Subcontractor under clause 3.3, then, from the date of service of the notice, the Sub-contract shall continue in full force and effect, as if it had been entered into between the Subcontractor and the [Client / Beneficiary] (to the exclusion of the Contractor).

3.5 In complying with this clause 3, the Subcontractor:

3.5.1 does not waive any breach of the Sub-Contract or default under by the Contractor; and

3.5.2 may exercise its right to terminate its employment under the Sub-Contract, or discontinue performance of the Subcontractor Works, after the expiry of the notice period referred to in clause 3.1, unless the Subcontractor's right to terminate or discontinue has ceased under clause 3.3.

4 STEP-IN RIGHTS: [CLIENT / BENEFICIARY] MAY STEP-IN

4.1 Without affecting clause 3.1, if the [Client / Beneficiary] serves a notice on the Subcontractor, copied to the Contractor, that:

4.1.1 confirms that the [Client / Beneficiary] wishes to step-in to the Sub-Contract; and

4.1.2 complies with the requirements for an [Client's / Beneficiary's] notice under clause 3.3,

then, from the date of service of the notice,

4.1.3 the Sub-contract shall continue in full force and effect, as if it had been entered into between the Subcontractor and the [Client / Beneficiary] (or its nominee), to the exclusion of the Contractor;

4.1.4 The parties shall take all steps and do all things as necessary to give effect to this clause 4.1 including as may be necessary entering into an amended and re-stated Sub-contract as a stand-alone document.

4.2 The Subcontractor shall assume that, between the Contractor and the [Client / Beneficiary], the [Client / Beneficiary] may give a notice under clause 4.1. The Subcontractor shall not enquire whether the [Client / Beneficiary] may give that notice.

4.3 In complying with this clause 4 the Subcontractor does not waive any breach of the Sub-contract or default under the contract

5 STEP-IN RIGHTS: SUBCONTRACTOR POSITION AND CONTRACTOR'S CONSENT

5.1 The Subcontractor shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.

5.2 The Contractor has entered into this Deed to confirm its consent to the agreement.

6 STEP-IN RIGHTS: [CLIENT'S / BENEFICIARY'S] GUARANTEE

If an [Client's / Beneficiary's] notice under clause 3 or clause 4 refers to the [Client's / Beneficiary's] nominee, the [Client / Beneficiary] shall be liable to the Subcontractor, as guarantor, for the payment of any sums due and payable from time to time to the Subcontractor from the [Client's / Beneficiary's] nominee.

7 NO INSTRUCTIONS TO SUBCONTRACTOR BY [CLIENT / BENEFICIARY]

Unless the [Client / Beneficiary] has stepped-in under clause 3 or clause 4, the [Client / Beneficiary] may not give instructions to the Subcontractor under this Deed.

8 PRIORITY OF STEP-IN

Where the Contractor has given rights in relation to the contract similar to those contained in this Deed to any other person then if both the [Client / Beneficiary] and any such other person

serve notice under clause 3 or clause 4, the notice served by the [Client / Beneficiary] shall prevail.

9 INTELLECTUAL PROPERTY

9.1 The Subcontractor grants to the [Client / Beneficiary], with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material and any Intellectual Property contained in the Material prepared by, or on behalf of, the Subcontractor for any purpose relating to the Project, including any of the Permitted Uses.

9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Subcontractor.

9.3 The Subcontractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and / or provided.

9.4 The [Client / Beneficiary] may request a copy (or copies) of some or all of the Material from the Subcontractor. On the [Client's / Beneficiary's] payment of the Subcontractor's reasonable charges for providing the copy (or copies), the Subcontractor shall provide the copy (or copies) to the [Client / Beneficiary].

9.5 In respect of any Material prepared by, or on behalf of, the Subcontractor (and which is being used for the purposes for which it was provided) the Subcontractor shall indemnify the [Client / Beneficiary] from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the [Client / Beneficiary] or to which the [Client / Beneficiary] may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

10 LIABILITY PERIOD

The [Client / Beneficiary] may not commence any legal action against the Subcontractor under this Deed after 12 years from the date of Completion.

11 ASSIGNMENT

11.1 The Subcontractor may not assign or transfer any rights under this Deed without the prior written consent of the [Client / Beneficiary].

11.2 The [Client / Beneficiary] may assign the benefit of this Deed:

11.2.1 on two occasions to any person; and

11.2.2 without counting as an assignment under clause 11.2.1;

11.2.3 by way of security to a Funder (including any reassignment on redemption of security); or

11.2.4 to and from a subsidiary or other associated companies within the same group of companies as the [Client / Beneficiary] so long as that assignee company remains within the same group of companies as the [Client / Beneficiary].

12 NOTICES

12.1 Each notice or other communication ("Notice") to be given under this Deed shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt Notice shall not be validly served by e-mail.

12.2 Any Notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on five (5) Working Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other Party at the address set out below:

12.2.1 [Client / Beneficiary]:

[ADDRESS]

Attention: [CONTACT]

12.2.2 Subcontractor:

[ADDRESS]

Attention: [CONTACT]

12.2.3 Contractor:

[ADDRESS]

Attention: [CONTACT]

12.3 Any Notice given by any Party shall be deemed to have been received:

12.3.1 if given by hand, at the time of day of actual delivery;

12.3.2 if posted, by 10am on the second Working Day following the Working Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

12.3.3 if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

13 THIRD PARTY RIGHTS

A person who is not a Party to this Deed shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

14 GOVERNING LAW AND JURISDICTION

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

14.2 The Parties irrevocably agree that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Client directs that the High Court in London (or elsewhere) should have jurisdiction) to settle any disputes which may arise out of or in connection with this Deed and / or its subject matter or formation (including non-contractual disputes or claims).

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

[DN: Execution clauses to be inserted]

Appendix 6 -

The Performance Bond

Date: [•]

(1) [CONTRACTOR] ("Contractor")

(2) [GUARANTOR] ("Guarantor")

(3) TRANSPORT FOR WALES / TRANSPORT FOR WALES RAIL LTD ("Client")

Performance Bond

relating to

The provision of [•] Works in connection with [•] Project

Blake Morgan LLP
One Central Square
Cardiff CF10 1FS
www.blakemorgan.co.uk

THIS BOND IS MADE THE [●] DAY OF [●] 20[●]

BETWEEN

(1) [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH (the "**Client**");

(2) [**CONTRACTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Contractor**"); and

(3) [**GUARANTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Guarantor**").

BACKGROUND

(A) The Client has or is about to enter into a contract, reference [REFERENCE], [dated [DATE]] with the Contractor for [DETAILS OF WORKS] ("Contract").

(B) Pursuant to the Contract, the Contractor is required to procure a bond in the form of this Bond to be provided by the Guarantor to the Client.

AGREED TERMS

1 DEFINITIONS

1.1 In this Bond the following words shall have the following meanings:

Bond	this bond
Completion	has the meaning given to it in the Contract
Demand	a demand by the Client for payment pursuant to Clause 2.2 which satisfies the criteria in Clause 2.3
Insolvency	(in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a

	bankruptcy order against it, the appointment of a receiver over its assets or the making of an arrangement with its creditor.
Loss	any debt, damage, interest, cost, loss or expense suffered by the Client
Maximum Amount	the maximum amount of this Bond which shall not exceed in aggregate £[MAXIMUM AMOUNT OF BOND]
Party	a party to this Bond
Project	[definition to be inserted].
Working Day	a day other than a Saturday or Sunday, or a public holiday in Wales.

2 PAYMENT

2.1 The Guarantor guarantees to pay to the Client any Loss caused by:

2.1.1 the Contractor's breach of the Contract; and / or

2.1.2 Insolvency of the Contractor,

up to the Maximum Amount.

2.2 The Client may deliver a Demand to the Guarantor requiring the Guarantor to pay the Loss specified in the Demand, up to the Maximum Amount. The Guarantor shall pay the sum specified in the Demand to the Client within five (5) Working Days of receipt of the Demand.

2.3 The Demand must:

2.3.1 be in writing and state:

(a) the breach of Contract or Insolvency of the Contractor giving rise to the Demand; and

(b) the sum demanded;

2.3.2 state the account into which the sum demanded shall be paid;

2.3.3 be signed on behalf of the Client; and

2.3.4 be delivered to the Guarantor in accordance with Clause 7 of this Bond.

2.4 The Client may make more than one Demand for an amount or amounts not exceeding the Maximum Amount in aggregate.

3 EXPIRY

3.1 This Bond shall expire on [TBC] ("Expiry").

3.2 On Expiry, this Bond shall become null and void, whether returned to the Guarantor for cancellation or not, except in respect of any Demand which is received by the Guarantor prior to Expiry.

4 VARIATIONS TO THE CONTRACT

4.1 The Contract may be modified, amended or supplemented in any way without the consent of the Guarantor.

4.2 The Guarantor's liability under this Bond shall remain in full force and effect and shall not be affected or discharged by any act, omission, waiver, matter or thing including, without limitation:

4.2.1 the liquidation, dissolution or Insolvency of the Contractor;

4.2.2 invalidity, avoidance or termination of the Contract;

4.2.3 any alteration of the terms, conditions or provisions of the Contract;

4.2.4 the extent or nature of the Contract; or

4.2.5 any extension of time under the Contract,

which but for this provision might operate to release or otherwise exonerate the Guarantor under this Bond in whole or in part.

5 PRIORITY OF CLAIMS AGAINST THE CONTRACTOR

5.1 Until the Client has recovered all sums due to it under or in connection with the Contract, the Guarantor shall not:

5.1.1 in respect of any payment made or liability under this Bond, claim, rank or vote as a creditor in the liquidation of the Contractor in competition with the Client; or

5.1.2 enforce any security over the assets of the Contractor in respect of any such payment or liability in competition with the Client.

This Clause 5 shall not limit or restrict the exercise or enforcement by the Guarantor of its rights against any other person.

5.2 If the Guarantor recovers any sums in breach of Clause 5.1, the Guarantor shall hold such sums on trust:

5.2.1 to pay to the Client any sums due from the Contractor to the Client under or in connection with the Contract; and

5.2.2 subject to Clause 5.2.1, for the benefit of the Guarantor.

6 CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY

6.1 For the purposes of this Bond, any money judgment, award, adjudicator's decision or settlement agreement against the Contractor in favour of the Client under or in connection with

the Contract shall be conclusive evidence of any liability of the Contractor to which that judgment, award, agreement or decision relates.

6.2 Insolvency of the Contractor shall not reduce, release or impair the liability of the Guarantor under this Bond.

6.3 The Client may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this Bond.

7 NOTICES

7.1 Each Demand, notice or other communication ("Notice") to be given under this Bond shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt Notice shall not be validly served by e-mail.

7.2 Any Notice to be given by one Party to another under this Bond shall (unless one Party has specified another address to the other Party, such address to take effect on five (5) Working Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other Party at the address set out below:

7.2.1 Client:

[ADDRESS]

Attention: [CONTACT]

7.2.2 Guarantor:

[ADDRESS]

Attention: [CONTACT]

7.2.3 Contractor:

[ADDRESS]

Attention: [CONTACT]

7.3 Any Notice given by any Party shall be deemed to have been received:

7.3.1 if given by hand, at the time of day of actual delivery;

7.3.2 if posted, by 10am on the second Working Day following the Working Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

7.3.3 if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

8 ASSIGNMENT

8.1 The Guarantor may not assign or transfer any rights under this Bond without the prior written consent of the Client.

8.2 The Client may assign or transfer all or any rights under this Bond at any time to any party:

8.2.1 to whom it assigns or transfers its rights under the Contract;

8.2.2 who provides funding for the [Contract / Project];

8.2.3 who acquires the Client's interest in the [Contract / Project]; or

8.2.4 in which the Welsh Government has a controlling interest.

9 RIGHTS OF THIRD PARTIES

A person who is not a Party to this Bond shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

10 LAW AND JURISDICTION

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

10.2 The Parties irrevocably agree that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Client directs that the High Court in London (or elsewhere) should have jurisdiction) to settle any disputes which may arise out of or in connection with this Bond and / or its subject matter or formation (including non-contractual disputes or claims).

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

[DN: Execution clauses to be inserted]

Appendix 7
The Parent Company Guarantee

Date: [•]

(1) [CONTRACTOR] ("Contractor")

(2) [GUARANTOR] ("Guarantor")

(3) TRANSPORT FOR WALES / TRANSPORT FOR WALES RAIL LTD ("Client")

Parent Company Guarantee

relating to

[•]

Blake Morgan LLP
One Central Square
Cardiff CF10 1FS
www.blakemorgan.co.uk

THIS AGREEMENT IS MADE THE [•] DAY OF [•] 20[•]

BETWEEN

(1) [**GUARANTOR**] [(company number [•]) whose registered office is at] [whose trading address is at] (the "**Guarantor**"); and

(2) [**CONTRACTOR**] [(company number [•]) whose registered office is at] [whose trading address is at] (the "**Contractor**"); and

(3) [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH (the "**Client**")

BACKGROUND

(A) The Client has appointed the Contractor to carry out and complete the Works in relation to [•].

(B) The Guarantor (the [immediate OR ultimate] parent company of the Contractor) has agreed to guarantee the Contractor's due performance of its duties or obligations under the Conditions of Contract.

CONSIDERATION

In consideration of the payment of £1 by the Client to the Guarantor, receipt of which the Guarantor acknowledges, the Guarantor has agreed to enter into this agreement with the Client.

AGREED TERMS

1 DEFINITIONS

1.1 The following definitions and rules of interpretation apply in this deed:

Conditions of Contract	an agreement in writing dated [•] and made between the Client and the Contractor under which the Contractor agreed to carry out and complete the Works.
Insolvency Event	a party suffers an insolvency event if: (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters

into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;

(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;

(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over it;

(e) the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver

(f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets;

(g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

(h) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or

(i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

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

Works the carrying out and completion of the Works as set out in the Conditions of Contract and performed by or on

behalf of the Contractor under the Conditions of Contract.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any obligation on a party not to do something includes an obligation not to agree that thing to be done.

1.11 A reference to this deed or to any other deed, agreement or document referred to in this deed is a reference to this deed or such other deed, agreement or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.12 References to clauses are to the clauses of this deed.

1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor guarantees the due and punctual performance by the Contractor of the Contractor's duties and obligations to the Client under the Conditions of Contract.

2.2 If the Contractor fails to observe or perform any of its duties or obligations to the Client under the Conditions of Contract, or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Client under or in connection with the Conditions of Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the Client against all loss, debt, damage, interest, cost and expense incurred by the Client by reason of such failure or

non-payment and shall, on first written demand, pay to the Client, without any deduction or set-off, the amount of that loss, debt, damage, interest, cost and expense.

2.3 If the Contractor suffers an Insolvency Event or if the Client terminates the Contractor's appointment under the Conditions of Contract due to breach by the Contractor, the Guarantor shall indemnify the Client against all loss, debt, damage, interest, cost and expense incurred by the Client by reason of such Insolvency Event or termination and shall, on first written demand, pay to the Client without any deduction or set-off the amount of that loss, debt, damage, interest, cost and expense.

3 AMENDMENTS TO THE CONDITIONS OF CONTRACT

3.1 The Conditions of Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Contractor's duties, obligations and liabilities under the Conditions of Contract as modified, amended or supplemented) shall not be affected by:

3.1.1 any such modification, amendment or supplement; or

3.1.2 any invalidity, avoidance or termination of the Conditions of Contract; or

3.1.3 any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor. The terms of this deed shall apply to the terms of any such compromise as they apply to the Conditions of Contract.

4 CLIENT DOES NOT HAVE TO PURSUE CONTRACTOR

The Client does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this deed.

5 INSOLVENCY OF CONTRACTOR

Without affecting clause 2.3, if the Contractor suffers an Insolvency Event that shall not affect or reduce the Guarantor's liability under this deed.

6 PRIORITY OF CLAIMS AGAINST CONTRACTOR

As long as any liability incurred by the Contractor to the Client guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect (or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

7 LIMIT OF LIABILITY

The Client may not recover any more under this deed in respect of any matter than the Client would be entitled to recover from the Contractor in respect of that matter, net of any set off. The Client may not start proceedings against the Guarantor under this deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

8 ASSIGNMENT

8.1 The Client may assign or charge the benefit of this deed to any person to whom the Client lawfully assigns or charges the benefit of the Conditions of Contract.

8.2 The Client shall notify the Guarantor of any assignment. If the Client fails to do this, the assignment shall still be valid.

8.3 The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 8.1 may not recover any sum under this deed because that person is an assignee and not a named party to this deed.

8.4 The Guarantor and the Contractor may not assign or charge the benefit of this deed without the Client's written consent

9 NOTICES

9.1 Any notice to be given under this agreement shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by special or recorded delivery post to the address of the relevant party shown on page 1 or such other address as may be notified by a party to the other party from time to time.

9.2 If the notice is sent by special or recorded delivery post, it shall be deemed to be received two (2) Working Days after the day it was posted.

9.3 If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered if it is delivered before 5.00 pm on a Working Day, failing which it is deemed received on the next Working Day.

9.4 A notice given under or in connection with this agreement is not valid if sent by email.

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

10 THIRD PARTY RIGHTS

No one other than a party to this deed, their successors and permitted assignees, shall have any right to enforce any of its terms.

11 GOVERNING LAW AND JURISDICTION

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

11.2 Each party irrevocably agrees that the courts of England and Wales sitting in Cardiff shall have exclusive jurisdiction (save where the Client directs that the High Court in London (or elsewhere) shall have jurisdiction) to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

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

[DN: Execution clauses to be inserted]

Appendix 8 - Trust Deed for Project Bank Account

Part A: Where the *Contractor* is the sole account holder

Trust Deed

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between . . . . . and . . . . . for . . . . . (the *works*).

Background

The *Client* and the *Contractor* have entered into a contract for the *works.*

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Contractor* for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Client* and *Contractor.* The agreement of the *Client* and *Contractor* is treated as agreement by the Named Suppliers who are parties to this deed,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

Executed as a deed on . . . . . .

by

. . . . . (*Client*)

. . . . . (*Contractor*)

. . . . . .

. . . . . .

. . . . . .

. . . . . .

(Named Suppliers)

Part B: Where the *Client* and the *Contractor* are joint account holders

Trust Deed

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between . . . . . and
. . . . . for . . . . . (the *works*).

Background

The *Client* and the *Contractor* have entered into a contract for the *works.*

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Client* and the *Contractor* have established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Client* and the *Contractor* for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Client* and *Contractor.* The agreement of the *Client* and *Contractor* is treated as agreement by the Named Suppliers who are parties to this deed,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

Executed as a deed on . . . . . .

by

. . . . . (*Client*)

. . . . . (*Contractor*)

. . . . . .

. . . . . .

. . . . . .

. . . . . .

(Named Suppliers)

Appendix 9 - Joining Deed for Project Bank Account

Part A: Where the *Contractor* is the sole account holder

Joining Deed

This agreement is made between the *Client*, the *Contractor* and . . . . . (the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between . . . . . and . . . . . for . . . . . (the *works*).

Background

The *Client* and the *Contractor* have entered into a contract for the *works.*

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

The *Client*, the *Contractor* and the Named Suppliers have entered into a deed as set out in Appendix 8 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

Executed as a deed on . . . . . .

by

. . . . . (*Client*)

. . . . . (*Contractor*)

. . . . . (Additional Supplier)

Part B: Where the *Client* and the *Contractor* are joint account holders

Joining Deed

This agreement is made between the *Client*, the *Contractor* and . . . . . (the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between . . . . . and . . . . . for . . . . . (the *works*).

Background

The *Client* and the *Contractor* have entered into a contract for the *works.*

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Client* and the *Contractor* have established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

The *Client*, the *Contractor* and the Named Suppliers have entered into a deed as set out in Appendix 8 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

Executed as a deed on . . . . . .

by

. . . . . (*Client*)

. . . . . (*Contractor*)

. . . . . (Additional Supplier)

Appendix 10 – Advanced Payment Bond

Date: [•]

(1) [CONTRACTOR] ("Contractor")

(2) [GUARANTOR] ("Guarantor")

(3) TRANSPORT FOR WALES / TRANSPORT FOR WALES RAIL LTD ("Client")

ADVANCED PAYMENT BOND relating to

The provision of [•] in connection with [•] Project

Blake Morgan LLP
One Central Square
Cardiff CF10 1FS
www.blakemorgan.co.uk

THIS BOND IS MADE THE [•] DAY OF [•] 20[•]

BETWEEN

(1) [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH (the "**Client**");

(2) [**CONTRACTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Contractor**"); and

(3) [**GUARANTOR**] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Guarantor**").

BACKGROUND

(A) The Client has or is about to enter into a contract, reference [REFERENCE], [dated [DATE]] with the Contractor for [DETAILS OF WORKS] ("Contract") and that the Client will pay the Contractor an advance payment in accordance with the Contract of £[SUM] ("**Advance Payment"**). You require a bond for the Advance Payment.

(B) Pursuant to the Contract, the Contractor is required to procure a bond in the form of this Bond to be provided by the Guarantor to the Client for the Advance Payment.

(C) On demand advance payment bond No: [NUMBER] dated [DATE].

AGREED TERMS

1. In consideration of the Client entering into the Contract and paying the Contractor the Advance Payment, the Guarantor guarantees to pay, as primary obligor, to the Client within five (5) Working Days of receipt of the Client's first written demand and waiving all rights of objection and defence and without reference to the Contractor a sum or sums not exceeding in aggregate the Advance Payment provided that the Client's demand:

    1.1 complies with the provisions of this bond; and

    1.2 shall not exceed the Advance Payment less any sum as certified to the Guarantor, by the Client, in writing:

        (a) previously paid by the Guarantor to the Client under this bond; or

        (b) reimbursed or repaid by the Contractor to the Client under the Contract (including, without limitation, reimbursed or repaid by deduction from a sum otherwise due to the Contractor from the Client).

2. Expiry

2.1 In this bond, **Expiry** means the earliest of:

(a) close of normal banking hours at this office on [LONG-STOP DATE];

(b) the repayment of the Advance Payment by the Contractor or by the Guarantor to the Client as certified to the Guarantor, by the Client, in writing;

(c) the Advance Payment reducing to zero in accordance with the Contract as certified to the Guarantor, by the Client, in writing.

2.2 On Expiry, this bond shall expire and become null and void, whether returned to the Guarantor for cancellation or not, and any demand received after Expiry shall be ineffective.

3. Demand

3.1 The Client's demand under this bond must be received by the Guarantor before Expiry and must be in the form of a statement signed by the Client that:

(a) the Contractor has failed to perform the Contract in accordance with its terms and conditions (including, without limitation, any failure to repay the Advance Payment in accordance with the Contract) or the Contractor is Insolvent (as defined in the Contract);

(b) specifies the sum paid by the Contractor or by the Guarantor as referred to in paragraph 1.2, even if that sum is zero; and

(c) specifies the sum claimed.

3.2 The Guarantor shall accept such demand as evidence, for the purposes of this bond alone, that the sum claimed is due to the Client under this bond.

4. Notice

4.1 Each demand, notice or other communication ("Notice") to be given under this bond shall be given in writing in English and shall be delivered by hand or post. For the avoidance of doubt Notice shall not be validly served by e-mail.

4.2 Any Notice to be given by one party to another under this bond shall (unless one party has specified another address to the other party, such address to take effect on five (5) Working Days after receipt or deemed receipt of the Notice specifying the other address) be given to that other party at the address set out below:

Client:

[ADDRESS]

Attention: [CONTACT]

Guarantor:

[ADDRESS]

Attention: [CONTACT]

Contractor:

[ADDRESS]

Attention: [CONTACT]

4.3 Any Notice given by any party shall be deemed to have been received:

(a) if given by hand, at the time of day of actual delivery;

(b) if posted, by 10am on the second Working Day following the Working Day on which it was despatched by first class recorded or special delivery mail postage prepaid; and

(c) if sent by courier on the date and at the time that the courier's delivery receipt is signed,

provided that a Notice given in accordance with the above but received on a day which is not a Working Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Working Day.

5. Assignment

5.1 The Guarantor may not assign or transfer any rights under this bond without the prior written consent of the Client.

5.2 The Client may assign or transfer all or any rights under this bond at any time to any party:

(a) to whom it assigns or transfers its rights under the Contract;

(b) who provides funding for the Contract;

(c) who acquires the Client's interest in the Contract; or

(d) in which the Welsh Government has a controlling interest.

6. Variation to the Contract

6.1 The Contract may be modified, amended or supplemented in any way without the consent of the Guarantor.

6.2 The Guarantor's liability under this bond shall remain in full force and effect and shall not be affected or discharged by any act, omission, waiver, matter or thing including, without limitation:

(a) the liquidation, dissolution or Insolvency of the Contractor;

(b) invalidity, avoidance or termination of the Contract;

(c) any alteration of the terms, conditions or provisions of the Contract;

(d) the extent or nature of the Contract; or

(e) any extension of time under the Contract,

which but for this provision might operate to release or otherwise exonerate the Guarantor under this bond in whole or in part.

7. The Client and the Guarantor both agree that this bond does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this bond.

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

9. The Client and the Guarantor both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this bond or its subject matter or formation.

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

[DN: Execution clauses to be inserted]

TRAFNIDIAETH CYMRU
TRANSPORT FOR WALES

TfW Subcontract Procurement - Pro Forma

Contract Reference	
Name of Contractor	
Brief Description of Scope	

1 Level of Spend

Emergency Procurement	☐	Note: Emergency / time critical procurement event
£0 to £25,000	☐	Note: Minimum of three tenderers required (via Sell2Wales) if works are valued within this level of spend
> £25,000	☐	Note: Open Tender required (via Sell2Wales) for works valued within this level of spend

2 Tender

Number of returns	☐	
Tenderer Score (£ or %)		Note: £ or % dependent upon method of scoring

Tenderer 1	☐
Tenderer 2	☐
Tenderer 3	☐
Tenderer 4	☐
Tenderer 5	☐
Preferred tenderer	
Award Criteria	

3 Contract

Form of Contract

Option A	☐
Option C	☐
Option E	☐
Other	☐

Contract option selection rationale	

Please list all significant amendments to standard terms & conditions

Clause No.	Amendment

4 Commercial

Contract Sum / Total of the Prices	

	Y	N
Is Subcontract activity included in the latest forecast		

Please provide details and anticipated expenditure profile	

5 Risk

Please identify risks retained by TfW / Contractor over and above the Client risks set out in the subcontract conditions and provide details of mitigation measures. Provide details of stipulations that may expose TFW / IDP to additional risk

6 Appendices

Please ensure the following appendices are attached with this form:

Subcontract Assumptions

Copy of Subcontract Tender Documentation/ Assessment

7 Reasons for not accepting

- The appointment will not allow the Contractor to Provide the Works or;
- The Client is concerned (on reasonable grounds) about:
    - The financial standing or expertise or experience or insurance cover of the proposed Subcontractor or
    - Any breach of contract, negligence, late, incomplete or defective services or failure to rectify the same by the proposed Subcontractor in relation to any work previously performed (whether as a consultant or subcontractor) for the Client or

A reason for not accepting the Subcontractor is that:

The Client requires a collateral warranty and the Subcontractor is unable to provide a collateral warranty to the Client in a form which is acceptable to the Client.

- Their use will not allow the Contractor to Provide the Works or
- They do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation or
- they are inconsistent with the requirements of this contract or
- they limit rights under any collateral warranty or third party rights to be provided by the subcontractor to a greater extent than the rights under this contract in relation to the relevant subcontracted service or

A reason for not accepting the subcontract documents is that:

- they do not represent best value or open market or competitively tendered prices or

they are inconsistent with the requirements of this contract or the policies of the Client or the Welsh Government

8 Acceptance (to be completed by TfW)

1 Name

Signature

2 Name

Signature

Appendix 12– Vesting Agreement

AGREEMENT FOR VESTING AND INDEMNITY CERTIFICATE

This agreement is dated day of 20

Parties:

(1) [**Transport for Wales**, incorporated and registered in England and Wales with company number 09476013 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH or [**Transport for Wales Rail Ltd**, incorporated and registered in England and Wales with company number 12619906 whose registered office is at 3, Llys Cadwyn, Pontypridd, CF37 4TH (the "**Client"**) which term includes its successors in the exercise of its statutory functions, successors in title and permitted assignees; and

(2) [**CONTRACTOR**], incorporated and registered in England and Wales with company number [x] whose registered office is at [x] (the **"Contractor"**).

RECITALS

(A) In accordance with a contract dated [x] between the Client and the Contractor ("the Contract"), the Client has engaged the Contractor to carry out the Works [describe the Project and the Site] as set out in the Contract ("the Works").

(B) Under the Contract the Client authorises the Contractor to [insert details of why vesting agreement is required e.g. order certain materials].

(C) The Parties have agreed to enter this Vesting Agreement in advance of any payment made for the [x].

Definitions:

Except where defined below, the definitions and rules of interpretation that apply to this agreement shall be as set out in the Contract.

"Listed Items": the items set out in the Schedule of Listed Items annexed to this agreement.

"[Insert additional definitions if required]"

Conditions:

In consideration of the payment of £1 to the Contractor, receipt of which the Contractor hereby acknowledges, the Contractor agrees to enter into this agreement with the Client.

1. Prior to their delivery to the Site the Contractor has applied for payment in relation to the Listed Items under the Contract.

2. The Contractor warrants and undertake that the Listed Items:

   a) are intended to be incorporated in the Project;

b) shall be in accordance with the Contract (and in the event that they are not in accordance with the Contract, acknowledge that the Client may reject them and instruct that they shall immediately re-vest in the Contractor and be entirely at the Contractor's risk);

c) are at the Contractor's premises and are clearly identified that they are:

(i) held to the order of the Client;

(ii) to be delivered to (or adjacent to) the Site;

d) are set apart;

e) have been clearly and visibly marked, individually or in sets, by letters figures or pre-determined code or in such other manner agreed between the Contractor and Client, in a way that such marks will remain legible until they are delivered to (or adjacent to) the Site;

f) will be stored to the Client's satisfaction and in accordance with the manufacturer's instructions;

g) will be delivered to (or adjacent to) the Site to suit the agreed programme for the Project and will be safely and securely stored;

h) may be inspected at any reasonable time by the Client and/or the Client's servants or agents; and

i) in the event of the termination of employment under the Contract for any reason (including, without limitation, our respective insolvency and/or breach of contract), the Contractor shall, at their own cost, deliver them to (or adjacent to) the Site or to an alternative location for the purposes of storage, as instructed by the Client. If the Contractor fails to promptly perform that delivery, the Client may enter any premises and, at the Contractor's cost, collect them and take them to (or adjacent to) the Site or to any location for the purposes of storage.

3. The Contractor warrants and undertakes that the Listed Items are its absolute and unencumbered property. However, on payment by the Client to the Contractor in accordance with the Contract under which the Listed Items are included, the Contractor hereby agrees that the property in the Listed Items shall immediately pass unconditionally, absolutely and unencumbered to the Client. At that time, the Contractor and their respective sub-contractors, suppliers, servants and agents and any other third party shall have no property in any part or all of the Listed Items, no claim to part or all of them and no lien or charge over part or all of them. The Contractor shall take all necessary steps to bring to the notice of any third party who claims the right of custody, possession or ownership of the Listed Items that they are the property of the Client.

4. The Contractor acknowledges that the risk of loss and damage to the Listed Items remains with the Contractor.

5. The Contractor warrants and undertakes that the Listed Items are and will continue to be insured against loss or damage from any cause for their full replacement value under a policy of insurance protecting the interests of the Client and the Contractor and shall provide evidence to the Client that such insurance is in place on the date of this agreement and at any time thereafter when reasonably requested by the Client.

6. The Contractor hereby agrees to indemnify and hold harmless the Client against all costs, claims, demands, losses and expenses of whatsoever nature arising from any breach or non-observance by the Contractor of any of the terms in this agreement and whilst the Listed Items are in its possession and/or at the Site.

7. The Client may assign the benefit of this agreement to a third party at the same time as the benefit of the Contract is assigned or novated to that third party.

8. Any person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement provided always that this shall not affect any right or remedy of a third party which exists or is available apart from this Act.

9. This agreement is without prejudice to the terms of the Contract which shall continue to be binding and of full effect and shall not be amended waived or affected by this agreement, except that in the event of any discrepancy in or difference between this agreement and the Contract this agreement shall prevail.

10. This agreement shall be governed by and construed in accordance with English and Welsh law as it is applied in England and all disputes and/or differences in connection with this agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts.

This agreement shall take effect on the date stated at the beginning of it.

[DN: Execution clauses to be inserted]

SCHEDULE OF LISTED ITEMS:

Item Description	Details [DN: value, amount, specifics]